

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 17 March 2025	Committee Clerk
Meeting time: 13.00	0300 200 6565
	SeneddLJC@senedd.wales

Remote

Public meeting

(13.00 – 13.25)

1 Introduction, apologies, substitutions and declarations of interest

(13.00)

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(13.00 – 13.05)

(Page 1)

Attached Documents:

LJC(6)-10-25 – Paper 1 – Draft report

Affirmative Resolution Instruments

2.1 SL(6)593 – The Partnership Arrangements (Wales) (Amendment) Regulations 2025

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(13.05 – 13.10)

3.1 SL(6)590 – The Education (Student Finance) (Fee Limit and Loan Amounts) (Miscellaneous Amendments) (Wales) Regulations 2025

(Pages 2 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-10-25 – Paper 2 – Draft report

3.2 SL(6)591 – The Education (Student Finance) (Amounts) (Miscellaneous Amendments) (Wales) Regulations 2025

(Pages 4 – 6)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-10-25 – Paper 3 – Draft report

3.3 SL(6)592 – The Agricultural Tenancies (Requests for Landlord's Consent or Variation of Terms) (Wales) (Amendment) Regulations 2025

(Pages 7 – 9)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-10-25 – Paper 4 – Draft report

Affirmative Resolution Instruments

3.4 SL(6)594 – The Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2025

(Pages 10 – 11)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-10-25 – Paper 5 – Draft report

3.5 SL(6)595 – The Regulated Services (Inspection Ratings) (Wales) Regulations 2025

(Pages 12 – 14)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-10-25 – Paper 6 – Draft report

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

(13.10 – 13.15)

4.1 SL(6)580 – The Bread and Flour (Wales) Regulations 2025

(Pages 15 – 19)

Attached Documents:

LJC(6)-10-25 – Paper 7 – Report

LJC(6)-10-25 – Paper 8 – Welsh Government response

5 Inter-Institutional Relations Agreement

(13.15 – 13.20)

5.1 Correspondence from the Welsh Government: Meetings of inter-ministerial groups

(Page 20)

Attached Documents:

LJC(6)-10-25 – Paper 9 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Inter-Ministerial Group for Environment, Food and Rural Affairs, 10 March 2025

5.2 Correspondence and Written Statement by the Minister for Further and Higher Education: The Recognition of Overseas Qualifications (Charges) (England and Wales and Northern Ireland) Regulations 2025

(Pages 21 – 25)

Attached Documents:

LJC(6)-10-25 – Paper 10 – Letter from the Minister for Further and Higher Education, 10 March 2025

LJC(6)-10-25 – Paper 11 – Written Statement by the Minister for Further and Higher Education, 10 March 2025

5.3 Correspondence and Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2025

(Pages 26 – 28)

Attached Documents:

LJC(6)-10-25 – Paper 12 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 March 2025

LJC(6)-10-25 – Paper 13 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 12 March 2025

6 Papers to note

(13.20 – 13.25)

6.1 Correspondence with the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: Disused Mine and Quarry Tips (Wales) Bill

(Pages 29 – 81)

Attached Documents:

LJC(6)-10-25 – Paper 14 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 7 March 2025

LJC(6)-10-25 – Paper 15 – Summary guidance

LJC(6)-10-25 – Paper 16 – Letter to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 14 February 2025

6.2 Written Statement by the Cabinet Secretary for Education, and the Minister for Children and Social Care: The Children's Wellbeing and Schools Bill

(Pages 82 – 83)

Attached Documents:

LJC(6)-10-25 – Paper 17 – Written Statement by the Cabinet Secretary for Education, and the Minister for Children and Social Care, 10 March 2025

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

(13.25)

Private meeting

(13.25 – 15.45)

8 Legislation (Procedure, Publication and Repeals) (Wales) Bill: Order of consideration for Stage 2 proceedings

(13.25 – 13.30)

(Pages 84 – 85)

Attached Documents:

LJC(6)-10-25 – Paper 18 – Draft order of consideration

9 Visitor Accommodation (Register and Levy) Etc. (Wales) Bill: Consideration of draft report

(13.30 – 13.50)

(To Follow)

Attached Documents:

LJC(6)-10-25 – Paper 19 – Draft report

10 Disused Mine and Quarry Tips (Wales) Bill: Consideration of draft report

(13.50 – 14.35)

(Page 86)

Attached Documents:

LJC(6)-10-25 – Paper 20 – Draft report

LJC(6)-10-25 – Paper 21 – Letter from the Deputy First Minister and Cabinet

Secretary for Climate Change and Rural Affairs to the Climate Change,
Environment and Infrastructure Committee, 27 February 2025

11 Legislative Consent Memoranda on the Employment Rights Bill:

Consideration of draft report

(14.35 – 14.50)

(Pages 87 – 97)

Attached Documents:

LJC(6)-10-25 – Paper 22 – Draft report

12 Legislative Consent Memorandum on the Public Authorities (Fraud, Error and Recovery) Bill

(14.50 – 15.00)

(To Follow)

Attached Documents:

LJC(6)-10-25 – Paper 23 – Legal Advice Note

13 Legislative Consent Memorandum on the Border Security, Asylum and Immigration Bill

(15.00 – 15.10)

(Pages 98 – 107)

Attached Documents:

LJC(6)-10-25 – Paper 24 – Legal Advice Note

14 Briefing for Members on Senedd legislative processes: Draft correspondence

(15.10 – 15.20)

(Pages 108 – 148)

Attached Documents:

LJC(6)-10-25 – Paper 25 – Briefing on evidence session

LJC(6)-10-25 – Paper 26 – Draft letter

15 Correspondence from the Independent Water Commission: Call for evidence

(15.20 – 15.30)

(Pages 149 – 150)

Attached Documents:

LJC(6)-10-25 – Paper 27 – Advice note

16 Correspondence from Professor Colin Harvey, School of Law, Queen's University Belfast: Constitutional matters relating to Wales and the island of Ireland

(15.30 – 15.35)

(Page 151)

Attached Documents:

LJC(6)-10-25 – Paper 28 – Letter from Professor Colin Harvey, School of Law, Queen's University Belfast, 28 January 2025

17 Consolidation of planning law: Correspondence with the Counsel General and Minister for Delivery

(15.35 – 15.40)

(Pages 152 – 154)

Attached Documents:

LJC(6)-10-25 – Paper 29 – Letter from the Counsel General and Minister for Delivery, 11 March 2025

LJC(6)-10-25 – Paper 30 – Letter to the Counsel General and Minister for Delivery, 19 February 2025

18 Legislative Consent Memorandum on the Bus Services (No. 2) Bill

(15.40 – 15.45)

(Pages 155 – 158)

Attached Documents:

LJC(6)-10-25 – Paper 31 – Legislative Consent Memorandum

Statutory Instruments with Clear Reports 17 March 2025

SL(6)593 – The Partnership Arrangements (Wales) (Amendment) Regulations 2025

Procedure: Affirmative

These Regulations are made under the Social Services and Well-being (Wales) Act 2014, and they amend the Partnership Arrangements (Wales) Regulations 2015 (“the principal Regulations”).

The amendments make changes to regulation 19 of the principal Regulations (establishment and maintenance of pooled funds) to enable partnership bodies to exercise greater flexibility in the way that they pool funds in the exercise of their functions in relation to care home accommodation for older people.

Partnership bodies will continue to be required to maintain and pool funds when exercising these functions, but will no longer be required to do so on a regional basis (under arrangements with all the other partnership bodies for the regional partnership board area).

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made:

Date Laid:

Coming into force date: 31 March 2025



Agenda Item 3.1

SL(6)590 – The Education (Student Finance) (Fee Limit and Loan Amounts) (Miscellaneous Amendments) (Wales) Regulations 2025

Background and Purpose

These Regulations amend existing regulations to:

- (i) increase the full-time undergraduate tuition fee caps;
- (ii) apply these caps to all qualifying persons on qualifying courses at regulated Welsh institutions for academic years beginning on or after 1 August 2025; and
- (iii) increase the amount of tuition fee loan for academic years beginning on or after 1 August 2025 accordingly.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 1(3) provides that regulation 3 applies in relation to "*an academic year which begins on or after 1 August 2025...*". The term "academic year" is defined in regulation 2(1) of the Education (Student Support) (Wales) Regulations 2017, but it is not defined in these Regulations.

As a result it is not apparent whether "academic year" is intended to have the same meaning in these Regulations as that prescribed by the definition in the 2017 Regulations. It is worth noting that other recent education legislation (such as the Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2024 and the Education (Student Fees, Awards and Support) (Amendment) Regulations 2025) have included a definition of "academic year".

To provide clarity as to the Welsh Government's intended meaning of the term and to avoid potential confusion for the reader, we consider that a definition of "academic year" should be



included in these Regulations.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 March 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 3

Agenda Item 3.2

SL(6)591 – The Education (Student Finance) (Amounts) (Miscellaneous Amendments) (Wales) Regulations 2025

Background and Purpose

These Regulations amend the following Regulations:

- the Education (European University Institute) (Wales) Regulations 2014;
- the Education (Student Support) (Wales) Regulations 2017;
- the Education (Student Support) (Wales) Regulations 2018;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

The changes made by these Regulations adjust amounts of undergraduate and postgraduate student support. These changes have been made in line with a measure of the Consumer Price Index (CPI).

The Regulations also make a correction to the Welsh text of the Education (European University Institute) (Wales) Regulations 2014.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

- 1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 2 of these Regulations states that:

“Regulations 7 to 20 and 22 to 32 (update of amounts: the Education (Student Support) (Wales) Regulations 2017 and the Education (Student Support) (Wales) Regulations



2018) apply in relation to the provision of support to a student in relation to an academic year which began on or after 1 August 2025, whether or not anything done under these Regulations is done before, on or after that date”.

There is no definition of “academic year” included in these Regulations. The term is defined in both the Education (Student Support) (Wales) Regulations 2017 and the Education (Student Support) (Wales) Regulations 2018. “Academic year” has a different meaning in relation to a “compressed first year course” in each of those Regulations. As such, it is unclear if “academic year” is intended to have the same meaning in these Regulations as that prescribed by either of those Regulations, or a different meaning.

We note that other legislation (such as the Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2024 (S.I. 2024/669) and the Education (Student Fees, Awards and Support) (Amendment) Regulations 2025 (S.I. 2025/162)) has included a definition of “academic year”.

Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Explanatory Notes to the Regulations state that:

“The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.”

However, the Explanatory Memorandum states at paragraph 6.1 that an RIA has been conducted:

“An RIA has been conducted for the 2025 Regulations.”

The RIA has been included later in Part 2 of the Explanatory Memorandum.

3. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Explanatory Memorandum states at paragraph 5.1 that there has been no consultation in relation to the Regulations:

“There is no statutory requirement to consult on these regulations and no consultation has been undertaken.”



The RIA states at paragraph 6.3 that:

“the value of maintenance support for undergraduate students who begin a course on or after the 1 August 2019 has historically increased each year by the rate of increase in the National Living Wage (NLW)”.

An NLW based uplift to maintenance support rates for the 2025/26 academic year would be 7.3% (see paragraph 6.4(a) of the RIA). The RIA states that *“this option carries the largest financial risk and was discounted”* (paragraph 6.4(a)). Meanwhile a CPI based uplift would result in a lower proposed increase of 1.6% (see paragraph 6.4(b)), and this option was selected.

The RIA continues at paragraph 6.5 to state that *“most allowances, postgraduate support, and maintenance support for pre-2018 registered undergraduate students, are increased each year by a forecast measure of inflation historically RPIX”*. The RIA states that the RPIX value for the academic year 2025/26 would be 2.3%, whilst the CPI value is lower at 1.6%. Paragraph 6.6(b) of the RIA states that *“from a student’s perspective, CPI is expected to be slightly lower than RPIX and so annual increases to support will be smaller under this option from the 2025/26 academic year”*.

4. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations make corrections to historical errors which were previously identified by the Committee in its report on the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2024 (S.I. 2024/810 (W. 131)) (SL(6)510). However, this is not noted in section 2 of the Explanatory Memorandum (Matters of special interest to the Legislation, Justice and Constitution Committee).

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

12 March 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
Welsh Parliament

Pack Page 6

Legislation, Justice and Constitution Committee

SL(6)592 – The Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) (Amendment) Regulations 2025

Background and Purpose

These Regulations correct errors in the Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024 (“the 2024 Regulations”), in response to matters reported on by the Legislation, Justice and Constitution Committee (“the Committee”) in its report on the 2024 Regulations.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 2(2)(a), in the English language text, the location for the amendment is described as being found “*in the definition of “**relevant financial support**”*” (emphasis added) in regulation 2 of the 2024 Regulations.

However, the amendment is only being made to the definition found “*in the Welsh text*” of regulation 2 of the 2024 Regulations. Therefore, it should note the Welsh language definition “*cymorth ariannol perthnasol*”, rather than “*relevant financial support*”, in quotation marks in the English language text of regulation 2(2)(a) when identifying the definition for amendment.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 2(2)(b), the amendment seeks to replace the term “*retained direct EU legislation*” with the correct term “*assimilated direct legislation*” in the definition of “*statutory duty*” in regulation 2 of the 2024 Regulations.



In the Welsh language text describing the amendment, the new term is noted as “*deddfwriaeth uniongyrchol a gymhathwyd*” (emphasis added). However, this term has been standardised in Welsh as “*deddfwriaeth uniongyrchol a gymathwyd*” (emphasis added) in the list of terms found in Schedule 1 to the Legislation (Wales) Act 2019 and in the Welsh Government’s online database of Welsh language terms, BydTermCymru. It is also noted that the standardised term is used in the Explanatory Memorandum (see paragraph 4.2).

Merits Scrutiny

The following 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations seek to correct errors raised by the Committee in its report on the 2024 Regulations. As explained in the Explanatory Memorandum, at paragraph 2.1:

“These Regulations respond to matters reported on by the Legislation, Justice and Constitution Committee in points 3, 5, 6 and 7 of their report on The Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024 (see [SL\(6\)507](#)).”

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

It is noted that these Regulations do not address the remaining technical reporting points, namely 1, 2 and 4, from the Committee’s report on the 2024 Regulations.

The Welsh Government’s response to that report explained why it disagreed with reporting point 4. It did not disagree with reporting points 1 and 2 but explained that as the Welsh Government does “*not consider them to have any practical impact on the operation of the provision or instrument*”, it would not seek to amend the 2024 Regulations in respect of those points.

The Welsh Government reached a similar conclusion in relation to reporting points 3, 5 and 7, that it did not consider those points to have a practical impact on the operation of the relevant provision or instrument. However, as amending regulations (i.e. these Regulations) were required to address reporting point 6, it took the opportunity to address those points regardless. It is noted that the same approach could have been taken in relation to reporting points 1 and 2, in order to address the points raised.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

In its response to the Committee’s report on the 2024 Regulations, the Welsh Government acknowledged the need for amending regulations in relation to reporting point 6 of that report and explained that it would aim to introduce the amending regulations, i.e. these



Regulations, “before the end of 2024”. However, it is noted that these Regulations were not made until 27 February 2025 and, therefore, there has been a delay in the making of these Regulations.

The Committee [wrote](#) to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies MS, in relation to this point on 16 January 2025 and received a [response](#) on 30 January 2025.

As a result of the delay, the inconsistency relating to the time period for arbitration or third party determination as set out in regulation 3(8) of the 2024 Regulations and the corresponding provision in regulation 3(9) of the Agricultural Holdings (Requests for Landlord’s Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024, which was previously reported by the Committee and has been in force since 8 August 2024 (when the relevant Parts of those regulations came into force), will remain on the statute book until these Regulations come into force on 21 March 2025.

The Welsh Government is asked to clarify both the reason for the delay in making these Regulations and any practical impact this may have had on tenants who may have sought to refer their request to arbitration or third party determination between 8 August 2024 and 21 March 2025.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

No consultation has been undertaken in respect of these Regulations. The Explanatory Memorandum explains at paragraph 5.1:

“No consultation has been undertaken as these regulations make a minor amendment to reflect the original policy intent. They do not reflect a wider change of policy.”

Welsh Government response

A Welsh Government response is required in relation to reporting points 1, 2 and 5 only.

Legal Advisers

Legislation, Justice and Constitution Committee

3 March 2025



Agenda Item 3.4

SL(6)594 – The Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2025

Background and Purpose

These Regulations make amendments to primary and secondary legislation as a consequence of the commencement of paragraph 29 of Schedule 4 to the Tertiary Education and Research (Wales) Act 2022 ("**Paragraph 29**"), which provides for amendments to the School Standards and Organisation (Wales) Act 2013. Those provisions relate to school reorganisations.

Subject to the approval of these Regulations, it is intended that Paragraph 29 will be commenced on 5 April 2025, through the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 5 and Transitory and Transitional Provisions) Order 2025, alongside these Regulations.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In the italic headnotes at the top of pages 1 and 2, the reference to the provision under which the Regulations are laid is incorrect. The headnote refers to "section **146**" of the Tertiary Education and Research (Wales) Act 2022, which contains the power for making the Regulations. However, it should refer to "section **143(3) and (4)(e)(ii)**" of that Act as noted in the second paragraph of the preamble which sets out the requirement for the Regulations to be laid in draft before, and approved by a resolution of, the Senedd.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Welsh Government response

The Welsh Government accepts that there is a typographical error in the draft headnote. It also notes that the correct powers are cited in the instrument's preamble. Subject to the approval of the Regulations, the draft headnote will be removed from the Regulations prior to making.

Legal Advisers

Legislation, Justice and Constitution Committee

06 March 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 11

Agenda Item 3.5

SL(6)595 – The Regulated Services (Inspection Ratings) (Wales) Regulations 2025

Background and Purpose

These Regulations were previously laid on 25 January 2025 and withdrawn on 25 February 2025 following this Committee's [report](#).

The Regulations make provision about ratings given by the Welsh Ministers in relation to the quality of care and support provided by a service provider following an inspection under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act"). They are due to come into force on 31 March 2025.

The Regulations impose requirements on certain service providers in relation to ratings given by the Welsh Ministers, to display such ratings in a specified manner and place and making it an offence to fail to do so; and to provide for an appeal procedure against such ratings in certain circumstances.

Procedure

Draft affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The Regulations refer to the Minister and the Cabinet Secretary by incorrect titles. It is stated that the Regulations are made by the Minister for Social Care, under the authority of the Cabinet Secretary for Health and Social Services. This should read the Minister for Children and Social Care, under the authority of the Cabinet Secretary for Health and Social Care.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd



In the Committee’s previous report on the withdrawn regulations, it was noted that under regulation 4(2)(b), a service provider is prevented from submitting an appeal against the rating that has been applied to them until the service provider has received the outcome of the Welsh Ministers’ review of the inspection ratings. There is no time frame set by the Regulations within which the Welsh Ministers must provide such outcome.

In its response to the report, the Welsh Government noted:

The time frame within which Care Inspectorate Wales (“CIW”) (who exercise the functions of regulator on behalf of the Welsh Ministers) provide the outcome of a review requested under regulation 4(2)(a) is set out in paragraph 6.9 of CIW’s [Responding to Inspection Reports Policy \(HTML document\)](#) | [Care Inspectorate Wales](#).

“6.9. We aim to respond within 5 working days of receiving a challenge. Where there is (or is likely to be) a delay the Registered Person, Responsible Individual or relevant person will be informed of the delay and advised of a revised timescale for our response.”

The policy is the means for setting the timescales for sharing the outcome of the Welsh Ministers’ review. Providing the time frame for response in the policy rather than legislation addresses the need for providers to have certainty and the need to avoid delay while affording greater flexibility at operational level where timings can be affected by several variable factors.

Welsh Government response

A Welsh Government response is required to reporting point 1 only.

Government Response:

Technical Scrutiny point 1: We are grateful to the Committee for pointing out the incorrect titles of the Minister and Cabinet Secretary in the signature clause. We will amend the titles of the Minister and Cabinet Secretary as shown in the table below prior to the making of the Regulations.

Technical drafting corrections to be made prior to the making of the Regulations

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
For “Y Gweinidog Gofal Cymdeithasol, o dan awdurdod Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol” substitute “Y Gweinidog Plant a Gofal Cymdeithasol, o dan awdurdod Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol”.	For “Minister for Social Care, under the authority of the Cabinet Secretary for Health and Social Services” substitute “Minister for Children and Social Care, under the authority of the Cabinet Secretary for Health and Social Care”.



Minor issues such as formatting, minor changes to the explanatory note and footnotes and correcting typographical errors will also be corrected prior to making.	

Legal Advisers

Legislation, Justice and Constitution Committee

6 March 2025



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 14**

Legislation, Justice and Constitution Committee

SL(6)580 – The Bread and Flour (Wales) Regulations 2025

Background and Purpose

These Regulations make provision in relation to bread and flour that is to be sold in, or imported or moved into, Wales. These Regulations revoke and replace (with amendments) the Bread and Flour Regulations 1998 (“the 1998 Regulations”) insofar as those regulations apply in relation to Wales.

The 1998 Regulations establish compositional and labelling requirements for bread and flour. These Regulations amend provisions on the mandatory fortification of non-wholemeal wheat flour by adding folic acid to the list of required substances and update existing requirements for the mandatory addition of calcium carbonate, iron, niacin, and thiamine.

These Regulations also include exemptions for flour produced by small mills, introduce an improvement notice approach to enforcement and contain transitional provision.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 5 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In regulation 2, in the definition of “flour”(“blawd”), the English text includes the words “*and includes meal*”. The corresponding Welsh language text reads “ac mae’n cynnwys **blawd**”.

The Welsh Government is asked to confirm whether it considered alternative wording for this provision, in order to distinguish “flour” from “meal” in the Welsh text of the definition.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



Regulation 7(1) contains exemptions from regulations 3 to 5 for bread and flour produced for exempted uses which include bread for use in the production of food that is for export to a third country.

The Welsh Government is asked to explain whether this particular exempted use is consistent with equivalent exemptions applying in England and Scotland pursuant to regulation 3 of the 1998 Regulations (as amended), which appear to exempt only flour for that purpose (as opposed to both flour and bread).

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the Table in Schedule 2 to these Regulations, in the Welsh text, "*Cl Pigment White 18; Chalk*" appears in English.

The Welsh Government is asked to clarify whether this text was included intentionally.

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In the first row of the Table in Schedule 3, the English text reads "*Iron powder **consisting essentially** of finely-divided metallic iron...*".

The Welsh Government is asked to explain:

- a) the meaning conveyed by "*consisting essentially*" in this context; and
- b) whether it considers that the corresponding Welsh language text ("*wedi ei gyfansoddi*") carries equivalent meaning.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The English text of the entry against 'Solubility' in the Table in Schedule 3 to these Regulations contains the wording "***weight in weight** hydrochloric acid...*".

The Welsh Government is asked to confirm whether the words "weight in weight" have been included in error, given that the Welsh text suggests that the phrase "***by weight of hydrochloric acid***" should appear in this provision.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



The Explanatory Memorandum to these Regulations notes that:

“The Food Standards Agency in Wales (FSA) alongside the Department for Environment, Food and Rural Affairs (Defra), the Food Standards Agency in Northern Ireland and Food Standards Scotland (FSS) worked together on a review of policy relating to bread and flour, this review being conducted under the Food Compositional Standards and Labelling provisional common framework in efforts to align UK policy as far as possible. This work was also undertaken in conjunction with Welsh Government, the Department of Health and Social Care (DHSC), Scottish Government and Department of Health Northern Ireland who have responsibility for matters of public health. The addition of folic acid to flour was also considered by officials from across the UK under the Nutrition Labelling and Composition Standards (NLCS) framework as the addition of vitamins and minerals to food fall in scope of this framework.”

7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Explanatory Memorandum describes the formal UK-wide consultation which ran from 1 September to 23 November 2023. We also note that discussion of the policy of mandatory fortification of flour with folic acid is longstanding, and was subject to previous consultation in 2019.

The full summary of responses to the 2023 consultation, found on the UK Government's Department for Environment, Food and Rural Affairs website, highlights that varied opinions were raised about mandatory folic acid fortification, including the potential health risks for older people and the potential mitigations, such as accompanying B12 fortification.

Welsh Government response

A Welsh Government response to technical reporting points 1 – 5 is required.

Committee Consideration

The Committee considered the instrument at its meeting on 17 February 2025 and reports to the Senedd in line with the reporting points above.



Government Response: *The Bread and Flour (Wales) Regulations 2025*

Technical Scrutiny point 1: The Welsh Government acknowledges that there is an issue with the use of the word “blawd” to cover both “flour” and “meal”, in the context of the Welsh text of the definition of “flour” (“*blawd*”) in regulation 2 of the Bread and Flour (Wales) Regulations 2025 (‘the Regulations’).

The Welsh Government is considering how best to amend the definition to properly distinguish “flour” from “meal” in the Welsh text of the definition but anticipates including a correcting amendment within the omnibus amending instrument being brought forward before the summer recess.

Technical Scrutiny point 2: The decision to include bread, as an ingredient in a product, to be exempt from certain requirements, where it is destined for export to third countries, is intended to capture those products where bread is, itself, an ingredient, albeit affecting perhaps a limited number of products.

By way of context, the Bread and Flour Regulations 1998 (‘the 1998 Regulations’) were revoked and replaced by the Regulations, with amendments, of which this provision is one example. This provision supplements amendments made by the Food (Withdrawal of Recognition) (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2022 (‘the 2022 Regulations’) to the 1998 Regulations. Amendments made by the 2022 Regulations to the 1998 Regulations, amongst other things, included exemptions so that any bread or flour produced in Wales, if destined for export to a third country, need not comply with fortification rules. The exemptions covered also flour produced, imported or moved into Wales that is for use in Wales for the production of food that is to be exported to a third country. These exemptions did not extend to bread used as an ingredient in a product destined for export to a third country, so this has been addressed in the Regulations.

This amendment benefits key stakeholders by providing greater clarity and benefits industry supplying products containing bread as an ingredient by exempting them from fortification requirements if these products are destined for export to a third country. The amendment will not affect products from other countries, nor will it affect Welsh businesses who trade with third countries as they already need to comply with the legislative requirements for the nations to which they export.

Technical Scrutiny point 3: The Welsh Government confirms that the words “CI Pigment White 18” was included intentionally in the Welsh language text in the Table in Schedule 2 to the Regulations. “CI Pigment White 18” is a name used by the Colour Index™, for which there is no standardised Welsh equivalent.

The Welsh Government acknowledges that the word “Chalk” is an error – the equivalent Welsh word “Sialc” should have been used and anticipates including a

correcting amendment within the omnibus amending instrument being brought forward before the summer recess.

Technical Scrutiny point 4: In the Table in Schedule 3 to the Regulations, the wording “...*consisting essentially of finely-divided metallic iron*...” was taken from the equivalent wording in Schedule 2 to the Bread and Flour Regulations 1998. On further consideration, the Welsh Government believes that, in the context of the relevant text of the Regulations, the word “essentially” in the English language text is effectively redundant. The Welsh Government considers that the corresponding Welsh language text (“*wedi ei gyfansoddi*”) is correct and carries equivalent meaning.

For clarity, the Welsh Government anticipates including a correcting amendment to the English language text (to remove the word “essentially”) within the omnibus amending instrument being brought forward before the summer recess.

Technical Scrutiny point 5: The Welsh Government acknowledges the point. The error is in the Welsh text. The term “weigh in weight” (often written as “w/w”) refers to the proportion of a particular substance within a mixture, as measured by weight or mass. The Welsh equivalent would be “*pwysau yn ôl pwysau*”

The Welsh Government anticipates including a correcting amendment within the omnibus amending instrument being brought forward before the summer recess.

Agenda Item 5.1

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: PO/HIDCC/0106/25

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

10 March 2025

Dear Mike,

I am writing in accordance with the inter-institutional relations agreement to let you know that the Inter-Ministerial Group for Environment, Food and Rural Affairs meeting scheduled for 10 March has been postponed. Officials are working to identify a new date. I will update the Committee if a new date is identified before the next scheduled meeting due to take place on 12 May.

I have also copied this letter to the Climate Change, Environment and Infrastructure Committee and the Economy, Trade and Rural Affairs committee.

Yours sincerely

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Vikki Howells AS/MS
Y Gweinidog Addysg Bellach ac Uwch
Minister for Further and Higher Education

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: MA/LN/0616/25

Mike Hedges MS Chair,
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

10 March 2025

Dear Mike,

I am writing to notify you that I have provided my consent for the Recognition of Overseas Qualifications (Charges) (England and Wales and Northern Ireland) Regulations 2025 to apply to Wales.

I have laid a Written Statement which can be found at [Written Statement: The Recognition of Overseas Qualifications \(Charges\) \(England and Wales and Northern Ireland\) Regulations 2025 \(10 March 2025\) | GOV.WALES](#). Unfortunately, due to the extremely short timescale to progress the making of these regulations it has not been possible on this occasion to provide the Legislation, Justice and Constitution Committee with pre-consent notification, and I apologise that this is the case.

This instrument revokes and replaces the Recognition of Overseas Qualifications (Charges) Regulations 2024 (S.I. 2024/942). Whilst the earlier regulations extended and applied to the whole of the UK, following discussions with the devolved Governments in relation to the extent of reserved / devolved competence, the new instrument extends and applies only to England, Wales and Northern Ireland. At the time the earlier regulations were made it was considered by the Department for Education that the subject matter of the regulations was reserved as relating to both immigration (as its primary purpose) and education. The earlier regulations were shared with the devolved Governments in advance of being made on that basis, and no concerns were raised. However, as a result of subsequent detailed discussions between the Department for Education, the Scottish Government, Welsh Government and Northern Ireland Executive it has been concluded that the better view is that the regulations relate to the devolved matter of education.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vikki.Howells@llyw.cymru
Correspondence.Vikki.Howells@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Secretary of State retains the power to make the regulations in a devolved subject area in respect of Wales and Northern Ireland. However, as a result of the operation of section 53 of the Scotland Act 1998 (and given the revised devolution analysis) the UK Government now consider that the better view is that the power to make the regulations with regards Scotland has been transferred to the Scottish Ministers. As a result, these regulations make provision for England, Wales and Northern Ireland only, and equivalent provision will be made for Scotland in regulations made by the Scottish Ministers which will come into force on the same date.

The Regulations were subject to the negative procedure and the SI was signed by the Minister of State (Minister for Skills), Department for Education on 4 March, laid before Parliament on 5 March and will come into force on 28 March.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Howells', with a long horizontal flourish underneath.

Vikki Howells AS/MS

Y Gweinidog Addysg Bellach ac Uwch
Minister for Further and Higher Education



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Recognition of Overseas Qualifications (Charges) (England and Wales and Northern Ireland) Regulations 2025
DATE	10 March 2025
BY	Vikki Howells MS, Minister for Further and Higher Education

Members of the Senedd will wish to be aware I have given consent to the UK Government's Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

The 2025 regulations revoke the Recognition of Overseas Qualifications (Charges) Regulations 2024 (S.I. 2024/942). The earlier regulations extended and applied to the whole of the UK. However, following discussions with the devolved Governments in relation to matters of competence, this instrument extends and applies only to England, Wales and Northern Ireland. In re-making provision contained in S.I. 2024/942, the 2025 regulations also correct previous drafting errors with respect to definitions relating to services intended for refugee organisations and priority services.

This Instrument also updates the services and charges related to the comparability and recognition of UK and overseas qualifications. These services are provided in pursuance of international obligations. The UK's National Information Centre ("UK ENIC") provides these services ("the UK ENIC services"). An external provider, Ecctis Limited, carries out the UK ENIC services through a contract with the Department for Education.

This Instrument includes the following changes in respect of services and charges:

- **Charges for services:** An increase has been applied to all UK ENIC services to manage increased costs of delivery resulting from inflation.
- **Subscription Package:** The description of the service has been updated to reference the subscriber query support where this is relevant.
- **Ancillary Services:**
 - The £7.50 charge for the delivery of a 'statement of comparability' or 'qualification reference statement' in electronic format containing an electronically verifiable signature has been removed as a charging option.
 - Charges for additional support to subscription package users from the provider of up to 300 additional queries has been added as a charging option.

- Members rate and non-member rate charges for a one day conference and a two day conference have been included as charging options.

Regulations 3 to 6 set out the applications and services for which charges may be charged. Regulation 7 states the payment arrangements. Regulation 8 makes provision on refunds. Regulation 9 contains revocation and savings provision. The Schedules summarise each application or service and state the corresponding charge.

The UK is a signatory to two international treaties regarding the recognition of academic qualifications: the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, signed by the United Kingdom on 7th November 1997; and the Global Convention on the Recognition of Qualifications concerning Higher Education, signed by the United Kingdom on 25th November 2019 (together “the Conventions”).

The Conventions aim to facilitate academic and professional mobility between states and enhance international cooperation and trust in higher education. The Conventions oblige signatory states to implement the recognition of qualifications from other signatory states and set out how recognition decisions shall be made. The Conventions also require signatory states each to establish and maintain a national information centre that facilitates access to information about higher education and qualifications.

UK ENIC fulfils information and recognition functions for the United Kingdom. To date the UK has met these obligations through services that the Department for Education has contracted an external provider (Ecctis) to supply. The UK ENIC service is essential for recruitment of students and workers in various sectors of the UK economy. The UK ENIC Service is used by Welsh higher education institutions and individuals both living in Wales and intending to study in Wales.

The Welsh Government’s general principle is the law relating to devolved matters should be made and amended in Wales. However, on this occasion, I consider it appropriate for the substance of the amendments contained in this UK Statutory Instrument to apply to Wales. The regulations providing the legal basis for the charging of fees must align with and come into force to coincide with the UK Government’s new contract with an external provider to deliver the services. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources.

The Recognition of Overseas Qualifications (Charges) (England and Wales and Northern Ireland) Regulations 2025 were made by the Secretary of State, with consent of the Treasury, on 4 March in exercise of powers conferred by section 56(1) and (2) of the Finance Act 1973. The Regulations were laid before Parliament on 5 March and will come into force on 28 March.

Agenda Item 5.3

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/HIDCC/0133/25

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

12 March 2025

Dear Mike,

I refer to my letter to you of 7 March 2025 regarding The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2025 (“the No. 2 Regulations”). I previously wrote to you to notify the Committee of my intention to give consent to the Secretary of State for Environment, Food and Rural Affairs for the No. 2 Regulations to apply to Wales. I am writing to notify you that I have now provided this consent. I also laid a Written Statement which can be found [here](#).

The Regulations intersect with devolved policy and will apply to Wales, England and Scotland. The No. 2 Regulations were subject to the negative procedure, were laid and made on 11 March 2025 and come into force 21 days after the day on which they are made.

Yours sincerely,

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2025**

DATE **12 March 2025**

BY **Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs**

Members of the Senedd will wish to be aware I have given consent to the UK Government's Defra Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Pursuant to Article 2A(c)(ii) of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on Persistent Organic Pollutants (recast) ("the POPs Regulations") agreement was sought by The Baroness Hayman of Ullock to make a Statutory Instrument titled The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2025 ("the No. 2 Regulations") in relation to Wales.

The No. 2 Regulations 2025 amend the table in Part A of Annex I (substances listed in the Convention and in the Protocol as well as substances listed only in the Convention) to the POPs Regulations for Dechlorane Plus and UV-328.

Dechlorane Plus is used as an additive flame retardant in various products spanning multiple sectors. The No. 2 Regulations provide limited exemptions for the use of Dechlorane Plus in various applications: aerospace, space, defence, medical imaging and radiotherapy devices and installations, until 26 February 2030. They also provide for its use in replacement parts and repair for the above if originally manufactured with Dechlorane Plus - until 2044. Additionally, the use of Dechlorane Plus for replacement part for, and repair of medical devices, in-vitro diagnostic devices where it was used in the original manufacture under the No, 2 Regulations is permitted until the end of the service life of the article.

UV-328 is used as a UV-inhibitor plastics (prevents plastics from degrading over time in sunlight), again spanning multiple sectors of use. These regulations provide limited exemptions for the manufacture, placing on the market, and use of UV-328 in parts of land-based aerospace applications, defence applications, parts for land-based motor vehicles, industrial coating applications, mechanical separators in blood collection tubes, Triacetayl

cellulose film in polarizing filters, and photographic paper until 26 February 2030. Exemptions for replacement parts and repair of articles originally manufactured with UV-328 including articles for application for medical purposes, instruments for analysis, measurements, control, monitoring. Testing production and inspections (until no later than 2041), and replacement parts for, and repair of, articles in aerospace and defence applications where originally used in the manufacture - until 2044.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. However, on this occasion, I consider it appropriate for the substance of the amendments to apply to Wales. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources. Timely implementation will prevent production and supply disruptions in Aerospace, Defence, Medical and Automotive Sectors.

The No. 2 Regulations were laid and made on 11 March by the Secretary of State in exercise of powers conferred by Articles 15(1) and 18(1) of the POPs Regulations and come into force 21 days later, on 1 April.

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs

Eich cyf/Our ref: PO/HIDCC/0092/25

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

7 March 2025

Dear Mike,

Thank you for your letter of 14 February regarding the Disused Mine and Quarry Tips (Wales) Bill. Please see, in **Annex G** below, my responses to the questions in that letter.

In addition, during the scrutiny session on 10 February 2025, I offered to share summary guidance to assist the Committee with its scrutiny of the Disused Mine and Quarry Tips (Wales) Bill.

Attached are the following summaries for the Committee's consideration (these have already been shared with the Climate Change Environment and Infrastructure Committee):

- **Annex A:** Monitoring
- **Annex B:** Appeals against Demands for Costs
- **Annex C:** Compensation Claims
- **Annex D:** Cost Recovery
- **Annex E:** Management Plans
- **Annex F:** Assessment.

The documents provide a broad outline of the key areas which will be covered in guidance together with an indication of policy direction.

At this stage, it is not possible to provide detailed, definitive draft guidance because the development of draft guidance will be informed by engagement and consultation with stakeholders, in particular Planning and Environment Decisions Wales (PEDW), the Mining Remediation Authority (MRA), Natural Resources Wales and, where possible noting its establishment timeline, the Disused Tips Authority for Wales (the Authority). This will ensure the guidance works for the Authority, other bodies and the owners of land.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Well in advance of the Authority becoming operational, the expectation is that key staff will have been appointed, including the Chief Executive Officer, the Chief Operations Officer and the Chief Finance Officer. These persons will take part, along with other key stakeholders, in the advisory groups established to inform the development of the suite of guidance which will support the implementation and effective operation of the disused tip safety regime.

In time, the guidance will need to reflect future regulations which will set out the procedure for appeals and claims for reimbursement of owner's expenses on cancellation of a notice (issued under section 33) requiring a landowner to undertake operations.

The regulations and guidance will be informed by consultation and/or engagement with relevant stakeholders. A full suite of guidance will be published prior to the Authority becoming operational in April 2027.

At the session on 10 February, there was detailed discussion about the use of guidance and the perceived disadvantages of guidance when compared to settled provisions on the face of the Bill, or even further particular powers/duties in regulations.

To reiterate, I agree that in the development of any Bill, there is a balance to be struck between the use of guidance and the use of legislative provisions. I confirm that careful consideration has been given to what should be included on the face of this Bill, where a regulation-making power is appropriate and which areas are most appropriately addressed in guidance. I appreciate that this matter is of significant interest to the Senedd and to this Committee in particular.

In my view, guidance provides the Welsh Ministers with the flexibility to respond quickly to changing circumstances, such as climate change and advancements in technologies. If some of the areas intended to be covered in guidance were, instead, detailed on the face of the Bill or even included in regulations, there is a very real risk that those provisions could become outdated very quickly. This is particularly true of, for example, guidance on assessments. There are also areas where, by their very nature, the detail that is needed to supplement existing Bill provision falls more naturally to guidance as a result of the multitude of factors that need to be taken into consideration by the Authority when exercising its powers, for example, guidance on compensation and cost recovery.

The status and strength of the guidance seemed to be a concern to members of the Committee. Under section 69 of the Bill, both the Authority and PEDW (who will be appointed by the Welsh Ministers to determine relevant appeals on their behalf) are required to *have regard to* guidance given by the Welsh Ministers. Having regard to guidance means that the body to whom it is addressed must take it into account when exercising its functions. For example, in carrying out its duty to monitor registered tips, the Authority must take into account the relevant guidance and should reflect this in its actions, which I would expect, for example, to include the use of up-to-date inspection techniques.

The Authority and PEDW cannot simply ignore guidance given to them by Welsh Ministers. What this means in practice is that the Authority/PEDW must take the guidance into account and if it deviates from the guidance it will have to be able to provide clear reasons for doing so. If challenged, the Authority/PEDW should be able to demonstrate that it has considered and had regard to any relevant guidance – for example by referencing the guidance directly in the reasoning for any decision.

I believe that guidance is a very effective tool in technical, rapidly changing areas where it is imperative that both the Authority and Welsh Government are able to keep abreast of, and reflect, best practice and developing knowledge and expertise.

I would, of course be happy to have further discussions with the Committee on this or any other matter.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Huw Irranca-Davies'.

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Annex G

Question 1: There are a number of provisions within the Bill which require the consent of the Secretary of State under Schedule 7B to the Government of Wales Act 2006. In a letter to the Llywydd dated 8 November 2024, the First Minister stated that engagement with the UK Government to seek Secretary of State consent for the provisions had begun. Can you provide an update as to when consent is expected to be received?

Response

I am pleased to advise that Secretary of State consent has recently been received. A letter confirming receipt of consent has been sent to the Climate Change Environment and Infrastructure Committee, copied to the Llywydd, the Legislation, Justice and Constitution Committee and Finance Committee.

Question 2: The Explanatory Memorandum accompanying the Bill does not discuss human rights, although there is mention of human rights within the RIA. What account have you taken of human rights in preparing the Bill?

Response

Human rights implications were considered during the development of the Bill. I am satisfied that the Bill is compatible with the European Convention on Human Rights, including Article 1 of Protocol 1, Article 6 and Article 8.

Question 3: What was the outcome of any assessments undertaken in relation to the human rights impacts of the Bill? What steps have you taken to limit the interference with human rights by the Bill?

Response

As per my response above, during the Bill's development, consideration has been given to human rights. We are satisfied that the Bill is compatible with Convention rights. There is not an intention to release any additional information on human rights, other than that which is set out in the Impact Assessments - which were published on the Welsh Government website on the Bill's Introduction.

Question 4: Please can you explain if the outcome of the justice impact assessment resulted in a change of approach in relation to the Bill and if so, what that change was?

Response

I can confirm the outcome of the justice impact assessment did not result in a change of approach in relation to the Bill.

The provisions in the Bill that relate to policy on offences, appeals etc are what, in our view, are necessary and proportionate to support the new regime established under the Bill.

As set out in detail in response to questions 16 and 17 below, consideration was given to alternative means of enforcement, such as civil sanctions, but these alternative means of enforcing the Bill's provisions were not chosen for the reasons set out below which are unrelated to their potential impact on the justice system.

Question 5: You have acknowledged that the Bill changes elements of your 2022 White Paper for reasons of flexibility, proportionality and reasonableness. Why did you not therefore consult on a draft Bill given the importance of the subject matter?

Response

Whilst the Bill does change elements of what was set out in the White Paper, the provisions that are included in the Bill align, in key respects, with the provisions set out in the White Paper.

It is customary for there to be differences between what is set out in the White Paper and what is contained in the eventual draft Bill. Some of the changes came about following consideration of the White Paper responses. Others came about due to more detailed testing of the White Paper proposals during the Bill development process.

As you note in the question, where we have made changes to the policy they have been made to improve it – to make it more flexible, proportionate etc.

One of the main reasons for not consulting on a draft Bill is we did not consider the level of changes necessitated formal consultation, particularly when the level of engagement with key stakeholders in the Bill development stage, post White Paper, is taken into consideration.

Given the importance of the subject matter, we were keen to introduce the Bill. In light of my view that further formal consultation was not necessary, consulting on a draft would have unnecessarily delayed introduction and the establishment of the Authority.

Question 6: What are the differences between the Bill as described in the White Paper and the Bill as introduced, and as part of that information can you identify every occasion where the White Paper suggested the use of primary or secondary legislation but guidance is to be used instead?

Response

As set out above in relation to question 5, what we have done with the White Paper proposals is what any good proposal for legislation should do, we have considered the responses to the White Paper consultation and used these to inform and adjust the proposals. There was a real consensus following the White Paper that a new regime, headed by a specialist Authority, was needed for disused coal tips and also for non-coal tips. The responses also recognised the complexity of disused tips and the need for categorisation. The Bill delivers on all of these things.

Some changes have been made, but the fundamentals are there. Changes that have been made are necessary, proportionate and are intended to deliver a regime that will enable the Authority to deliver on its main objective to ensure disused tips do not threaten human welfare by reason of their instability. The differences are set out in detail in Chapter 4 of the Explanatory Memorandum (paragraph 4.9 onwards).

Table 1 below sets out the occasions where the White Paper suggested the use of primary or secondary legislation, but guidance is now proposed instead.

Table 1: changes in legislative approach

Area	White Paper proposal	Draft Bill
Assessments	<p>Requirement for the Authority to undertake assessments prescribed on the face of the Bill.</p> <p>Minimum content of assessments prescribed in subordinate legislation.</p> <p>The statutory minimum content supported by guidance developed by the supervisory authority.</p>	<p>Requirement for the Authority to undertake assessments prescribed on the face of the Bill.</p> <p>The Welsh Ministers intend to provide guidance to the Authority in respect of assessments.</p>
Content of the register	<p>The minimum content of the register prescribed in subordinate legislation.</p>	<p>The minimum content of the register prescribed on the face of the Bill.</p>
Management plans	<p>Duty placed on the Authority to produce management plans.</p> <p>The minimum content of management plans to be prescribed in statutory legislation.</p>	<p>The Welsh Ministers intend to provide guidance to the Authority in respect of management plans.</p>
Inspection	<p>Minimum content for inspection/ appraisal reports as prescribed by Welsh Ministers in subordinate legislation.</p>	<p>Requirement on Authority to monitor all registered disused tips on face of the Bill.</p> <p>The Welsh Ministers intend to provide guidance to support the Authority in respect of monitoring and inspections.</p>
Guidance about sanctions	<p>A requirement for the Authority to produce guidance on enforcement and civil sanctions, setting out its decision-making approach and use of both criminal and civil sanctions available to it under the Bill.</p>	<p>The Bill does not make provision for civil sanctions, and so there is no requirement for the Authority to produce guidance on that topic. No requirement to provide guidance on enforcement.</p>
Cost recovery	<p>It was proposed the Welsh Ministers by statutory instrument set out principles governing the allocation of financial responsibility for tip safety work between persons or entities in the public and private sectors.</p>	<p>The Bill sets out the factors that a court must take into account in allocating financial responsibility - i.e. demands for payment/contribution orders/compensation etc.</p> <p>The Welsh Ministers intend to provide guidance on the circumstances in which the Authority should seek to recover its costs, or should charge for the provision of advice, assistance or information.</p>

Question 7: The White Paper proposals focused on disused coal tips, but it suggested that the government would look to develop a framework, which can apply equally to both coal and non-coal tips, enabling the phasing in of other spoil tips into the new regime over time (paragraph 1.44).

(i) Has the application of the Bill to non-coal tips led to a greater reliance on guidance to deliver its objectives rather than subordinate legislation? (For example, in relation to management plans – see paragraph 6.12 of the White Paper).

Response

No, I do not believe the inclusion of non-coal tips in the Bill has led to a greater reliance on guidance.

I believe we have struck the right balance between the use of guidance and the use of legislative provisions. There has been careful consideration given to what should be put on the face of this Bill or in regulations, and what would be most appropriately addressed in guidance. The balance between guidance and legislative provision would have been the same had the Bill only applied to disused coal tips.

Guidance is preferred as we are creating an expert body who will apply its expertise in determining what action needs to be taken in a particular case: this is the main purpose of creating the Authority. While the Welsh Ministers may wish to guide the application of the Authority's expertise, the imposition of fixed rules may be too prescriptive given the wide range of circumstances that may arise and the range of factors that may need to be taken into account.

I am also of the view that the use of guidance will provide the Welsh Government and the Authority with maximum flexibility to respond quickly to changing circumstances and requirements, which would not be available if this were done on the face of the Bill or even, to a lesser extent, in regulations. This flexibility will help to ensure that guidance is robust, but also that it can keep pace with changing circumstances and technological developments.

(ii) If that is not considered to be the case, how has the decision to extend the Bill to include disused non-coal tips impacted on the level of detail included in the Bill, the powers to make regulations and the use of guidance?

Response

From the outset the provisions in the Bill have been developed to apply in the same way to coal and non-coal tips, therefore the inclusion of non-coal tips in the Bill has not impacted on the level of detail in the Bill, nor on decisions regarding the use of powers or guidance. The Bill enables the Authority to deal with threats in respect of any disused tip – this is important for the safety of communities in Wales.

I believe we have arrived at the right balance between the level of detail on the face of the Bill, powers to make regulations and what is appropriate to be addressed in guidance. The statement of policy intent (SOPI) sets out our policy intentions in relation to each of the delegated powers in the Bill. The SOPI was shared with the Climate Change Environment and Infrastructure (CCEI) Committee when the Bill was introduced.

I can assure the Committee that significant thought went into decisions regarding what was included on the face of the Bill and what we intend to address in guidance. I am of the view that guidance is an appropriate vehicle to set out our expectations, because it enables the Authority and stakeholders to be involved in shaping the regime, and, as set out in response to question (i) above, we are creating an expert body who will apply its expertise in determining what action needs to be taken in a particular case and the imposition of fixed rules may be too prescriptive. As you are aware, I have provided outlines of guidance to the CCEI Committee to give an indication of policy thinking/direction in some of these areas, they are also enclosed with this letter.

Question 8: What is the relationship between the definition of “threat to human welfare” in section 82, and the Authority’s main objective in section 2(1) to ensure that disused tips do not threaten human welfare?

Response

The meaning of “threat to human welfare” in section 82 is fundamental to the Authority’s main objective. The reference to “threatening human welfare” in section 2(1) is to be interpreted in accordance with section 82. This means, that underpinning all the Authority’s actions, is an awareness and evaluation of threats and potential threats to human welfare in the context of disused tips and any existing, or potential, instability.

By way of example, there could be a threat to human welfare if a disused tip located near a residential area became unstable and where any slippage resulting from instability could result in loss of human life, serious human illness or injury or serious damage to property.

Similarly, a threat to human welfare could exist where a disused tip located near electrical power lines and pylons becomes unstable and where any ground movement from instability could result in serious disruption to energy supply.

Question 9: Section 2(1) of the Bill sets out the Authority’s main objective. What are the Authority’s other objectives, and why aren’t they on the face of the Bill?

Response

As set out in section 2, the Authority’s main objective in carrying out its functions under the Bill is to ensure that disused tips do not threaten human welfare by reason of their instability. It is complemented by the provision in section 2(2) which provides that “in pursuance of its main objective, the Authority must promote high standards in relation to the management of disused tips and threats to their stability”. A list of the Authority’s objectives is not included on the face of the Bill as it is not feasible to provide a comprehensive description in the Bill of all of the Authority’s objectives. The main objective, as the phrase suggests, is one of the Authority’s objectives. There are others, but these will depend on the circumstances of a particular case, including the specific powers it is acting under. This will include complying with any relevant legal requirements, for example.

The purpose of section 2 is to make clear, on the face of the Bill, what the Authority is, principally, being established to do. It helps set the provisions of the Bill in context. The main objective will, at a general level, operate to influence judgments made by the Authority about how the other powers and duties that are conferred on it ought to be carried out. In common with other public bodies, it will have general objectives relating to performance of its functions that will be set in the remit letter for the Authority.

Question 10: Sections 12 to 19 concern assessments of the stability of a tip. The way assessments will be carried out is to be determined in guidance issued by the Welsh Ministers.

Why is there no detail about how assessments are to be carried out on the face of the Bill?

Why did you not consider including a power for that information to be set out in regulations?

Response

I can confirm that careful consideration was given to what would be on the face of this Bill and what would be more appropriately addressed in guidance. Several of the more technical elements of the regime, including the approach to assessments, will require input from experts, including experts from the Authority. This gives us the ability to have experts inform and shape the guidance, as the process for assessment becomes more sophisticated.

Guidance on assessments will need to keep pace with technological advances, putting the detail of how assessments should be carried out on the face of the Bill risks those provisions becoming outdated very quickly. Our approach ensures a robust and future proofed regime and gives the Authority flexibility to adapt its approach to the assessment processes. Guidance supports the principles of an adaptive and futureproof regime as it will allow the practical experience of the Authority, as it develops, to be incorporated into guidance.

I did give consideration to including a provision on the face of the Bill requiring regulations to prescribe how assessments are to be conducted. Whilst regulations are quicker to amend than primary legislation, they are still not as responsive to change and developments in best practice and technology as guidance. So, for that reason, I determined that guidance was the most appropriate vehicle.

Question 11: The Law Commission recommended a right of appeal against an entry in the tip register on the grounds that there is no tip situated on the land. Rather than an appeals process, section 20 of the Bill enables the tip owner (and other persons) to make representations on the proposal to register a tip, which section 21 requires the Authority to have regard to when deciding whether to register it. To what extent do you consider that this approach captures the intent of the Law Commission's recommendation?

Response

The Law Commission's recommendation belongs to a different system, under which the inclusion of a tip in the register automatically triggered obligations on landowners. The system in the Bill operates differently, and so the same approach is not needed.

In accordance with section 21(3)(b), the Authority is under a duty to have regard to any representations submitted to them as part of its decision-making process on whether to include a disused tip in the register.

I am of the view the right to make representations captures the essence of the Law Commission's recommendation which sought to ensure balance and fairness and a right for those affected by decisions on registration to have their views heard and taken account of. However, an advantage with our proposal is it gives those who receive a notice of proposed registration the opportunity to make representations **before** a decision on registration is made – rather than after as would be the case with an appeal.

It is also relevant to note that once a disused tip is included in the register, there are provisions within the Bill to remove a tip from the register. The Bill does not prevent a person from presenting evidence to the Authority requesting a tip's removal. As a public body, the Authority would have to consider any such representation received.

Question 12: Sections 20, 22 and 29 contain Henry VIII powers. Why are they subject to the negative procedure?

Response

The Henry VIII powers in sections 20, 22 and 29 respectively allow the Welsh Ministers, by regulations, to amend the minimum period for making representations in respect of a proposal to register a disused tip; a proposal to remove a tip from the register and a proposal to make a notifiable change to an entry on the register.

The negative procedure was applied to the respective regulation making powers, even though they give the power to amend primary legislation, as these are considered to be relatively minor changes in the context of the overall regime.

Question 13: Section 24 concerns the categories of tips. The White Paper (paragraph 7.7) says:

“We believe to provide clarity on roles and responsibilities, the legislation should clearly state who is responsible for which category of tip, providing parties with sufficient knowledge in advance of what responsibilities they will be required to meet.”

Why have you not followed what the White Paper proposed?

Response

Paragraph 7.7 of the White Paper relates to responsibility for inspecting a disused tip. It, and the following paragraphs, propose different arrangements for different categories of tip.

Under the Bill, the Authority will be responsible for monitoring all tips that are included in the register. This places the Authority under a duty to monitor any disused tip that poses a threat to human welfare by reason of instability, or which could pose such a threat in the event of instability. The monitoring and inspection of tips not included in the register – i.e. those tips that do not meet the criteria for registration, will remain the responsibility of the owner. We think this is a far more robust approach that ensures any disused tip with any potential to pose a threat to human welfare by reason of its instability falls under the monitoring responsibility of the Authority.

In terms of responsibility for the land, the Bill confirms that responsibility for land remains with the owner. It is a really important part of the Bill that it does not change responsibility or liability for a tip – it retains the status quo.

Question 14: The Welsh Government's letter to the Law Commission in March 2023 said that the Authority will be under a duty to make arrangements for management plans to be prepared for Category 1 and 2 tips. However, the EM states (paragraph 3.73) that:

“Whilst the Bill does not require the production of management plans, these will be important to the application of the regime.”

While management plans were discussed during the evidence session, it would be helpful if you could please explain what caused this position to change?

Response

I want to re-emphasise the importance of management plans, which will be integral to the new system. The draft outline guidance that I have made available to the CCEI Committee makes clear that the Welsh Ministers expect the Authority to produce management plans for the highest risk category of tips – categories 1 and 2, and to consider on a case by case basis whether a management plan is considered appropriate for the lower rated tips.

In reaching a decision on how best to incorporate management plans into the Bill, I am aware that we are leading the way, and we are one of the first/or the first country to devise a system for managing disused tips in a post mining environment during a time of great change in climate. With that in mind I am keen to ensure that we have the flexibility to respond quickly to developing expertise and changing circumstances.

Question 15: If the preparation of management plans is only an expectation in guidance, does that mean some Category 1 and 2 tips could feasibly not have management plans and therefore undermine the effectiveness of the legislation?

Response

The Authority must have regard to the relevant guidance which will clearly state the expectation that the Authority produce management plans for category 1 and 2 tips. Therefore, if the Authority decided not to produce a management plan for a category 1 or 2 tip, it would have to be able to show that in making that decision it has taken account of the relevant guidance and have cogent reason(s) for departing from it. We cannot envisage an instance where, or a reason why, the Authority would not produce a management plan for a category 1 or 2 tip.

Question 16: The White Paper proposed a range of enforcement powers and associated offences, and a range of civil sanctions like fixed monetary penalties, compliance notices, stop notices etc. These haven't been included in the Bill. The EM states (paragraph 4.30) during the course of policy development it was determined "their inclusion would make the regime overly bureaucratic and unwieldy".

Why would enforcement matters being placed on the face of the Bill be overly bureaucratic and unwieldy and is there a risk that this gap could reduce public confidence in the regime?

Question 17: Why is there no civil sanctions regime on the face of the Bill?

Response

I recognise the importance of effective enforcement provisions within the new regulatory regime, and I am satisfied that the Bill has a comprehensive suite of criminal offences that ensure the regime established under the Bill is enforceable. To illustrate, the Bill contains offences in relation to:

- Intentionally obstructing or interfering with the Authority carrying out inspections, monitoring activity or assessments under the Bill;

- A landowner, without reasonable excuse, failing to comply with a notice issued by the Authority requiring them to carry out operations on land necessary to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip or prevent a disused tip becoming more unstable so as to avoid or reduce threats to human welfare, within the period specified in the notice or within any extension granted in accordance with the provisions of the Bill;
- Intentionally obstructing or interfering with an investigation into whether operations on land are needed or the carrying out of operations;
- Intentionally damaging or otherwise interfering with works completed in the course of operations required by, or carried out under the Bill;
- Failing, without reasonable excuse, to give information required by the Authority or knowingly or recklessly providing information which is false and misleading in a material respect; and
- Intentionally obstructing a person exercising a power of entry under the Bill.

Section 72 of the Bill provides the Authority may bring prosecutions for offences under the Bill, as may the Director of Public Prosecutions (DPP) (or anyone else with the consent of the DPP). This is important to note, as it is not just the DPP that can act as a prosecutorial authority. As set out in the Justice Impact Assessment, it is anticipated that the Authority will bring the majority of any prosecutions that are brought under the Bill and it will not be reliant on a third party to do so on its behalf.

During the Bill's development, the conclusion was reached that including fixed monetary penalties, compliance and stop notices etc, would have made the system unwieldy and add an unnecessary layer of complication to the system including additional appeals which could lead to delay. These delays could have a negative impact on timescales for completion of work on disused tips. This would have been difficult for the Authority to administer and complex for landowners.

A policy judgement needed to be made balancing the utility of such measures against (i) the added bureaucracy and potential delay to the completion of works on disused tips that the institution of such measures could engender and (ii) damage to the collaborative approach that the Bill fosters with an emphasis on advice and assistance (with notices requiring works only being issued as a last resort where advice and assistance has not worked).

Our judgement was, when weighing these factors, that the complexity and bureaucracy that would accompany these measures was not justified when a comprehensive system of enforcement is provided for by the criminal sanctions under the Bill.

The aim of the Bill is to devise a regulatory system where the Authority works with landowners and supports them in the responsible management of disused tips. In the vast majority of cases advice and support will be sufficient and a complex system of civil sanctions was not considered to be warranted and would run counter to the collaborative ethos fostered by the Bill.

Question 18: Sections 33 and 34 enable property to be disposed of by the Authority and disused tip owners, including by sale. Why do you consider that this provision is necessary and could you provide details of what could be sold under this power?

Response

Including express authorisation for removal and disposal within these provisions is considered necessary, because express authorisation avoids doubt about whether the property rights of third parties represent an obstacle to carrying out operations.

The sale of any property would essentially be ‘a means to an end’ – a way to remove material from land for the purposes of carrying out operations required by a notice issued under the Bill. Such a sale would be ancillary to the overarching objective of the Bill: to ensure that disused tips do not threaten human welfare by reason of their instability.

Property that might need to be sold under this power would depend on the specific circumstances but could comprise materials from the disused tip itself or objects on the land which might interfere with the ability to carry out operations.

Question 19: Given the amount of detail that will be left to guidance, why wasn't a duty placed on the Welsh Ministers to produce and update guidance and why are you relying on the executive ministerial functions in section 58A of the Government of Wales Act 2006? How is that consistent with the Welsh Government's accessibility agenda?

Response

There isn't a need to include a power for the Welsh Ministers to produce and update guidance, because such a power to make guidance already exists in the Government of Wales Act 2006. We intend to utilise the power in section 58A to make guidance in connection with the Bill, as it would be inappropriate to duplicate legal powers. There is no reason why this guidance would not be published and therefore a specific duty in the Bill is not considered necessary.

In my view, the Bill and the supporting guidance is consistent with the Welsh Government's accessibility agenda. As we have heard from numerous people giving evidence in respect of the Bill before the CCEI Committee, the current regime under the Mines and Quarries (Tips) Act 1969 no longer provides an effective management framework for disused tips in the twenty-first century. The Bill and supporting guidance will be written bilingually and will be available electronically. The guidance will assist in ensuring that the legislation is easy to understand, and accessible, to all who may wish to rely on it. This is consistent with, and promotes, the values underpinning the accessibility agenda.

Question 20: Section 72 prevents proceedings being brought in respect of an offence in the Bill, or regulations made under it, other than by the Authority or with the consent of the Director of Public Prosecutions. Why is this provision necessary?

Response

The Authority and the Director of Public Prosecutions (DPP) may bring proceedings in respect of an offence in the Bill, or in regulations made under it. Third parties may also bring a private prosecution in respect of an offence in the Bill, or in regulations made under it, but need the consent of the DPP to do so. This restriction helps to prevent baseless or duplicative prosecutions from being brought: the DPP acts as a filter in this respect.

Question 21: Why do you consider that the Henry VIII power in section 73 is required?

Response

It is usual practice in Senedd Bills to include a Henry VIII power in the section that confers powers on Welsh Ministers to make consequential, transitional etc provisions. For example, such powers are included in the Health and Social Care (Wales) Bill and the Local Government Finance (Wales) Act 2024 that have recently been before the Senedd.

Without such a power, there is a risk that the government would be unable to make all the necessary consequential and/or transitional provisions required to give effect to the policy.

Such a power, if exercised, is subject to the affirmative resolution procedure and so will be subject to Senedd scrutiny and approval.

Question 22: What is the purpose of section 79 of the Bill, which makes specific provision in respect of Church of England land?

Response

Section 79 makes provision relevant to the way in which the Bill applies to land belonging to the Church of England and reflects the unique structure of the Church of England. There are a small number of Church of England dioceses that have land in Wales.

Question 23: Section 80 enables the Welsh Ministers to make regulations which modify the application of this Act in relation to land in which the Authority has an estate or interest. Why is this power necessary?

Response

The regulation making power in section 80 allows the Welsh Ministers to modify the application of the Act so that the Act continues to operate as intended in the situation where the Authority has an estate or interest in land.

At present, there are no plans for the Authority to acquire an estate or interest in land. The regulation making power has been included as a safeguard should the Authority do so, at some point in the future. Any regulations would reflect the Authority's role in the new regime, in the context of any acquisition of an estate or interest by the Authority. It might be necessary, for instance, to modify the provisions relating to the service of notices on landowners if the Authority acquires land, as the Authority would otherwise be required to serve notice on itself.

Any regulations made under section 80 would be subject to the affirmative procedure.

Question 24: Specific reference is made to the Crown including the Senedd Commission in section 84(7) of the Bill. Why is this provision needed?

Response

Section 84(7) helps to future proof the Bill as whilst we are not aware that the Senedd Commission owns land that could affect the stability of a disused tip, or intends to own such land in the future there could be a circumstance in the future – although I appreciate this appears unlikely – where the Senedd Commission purchases land containing, or near, a disused tip and entry may be required.

Including the Senedd Commission in section 84(7) follows recent precedent set in other legislation such as the Infrastructure (Wales) Act 2024 and the Historic Environment (Wales) Act 2023 and allows land owned by the Commission to be treated in the same way as land owned by Government departments.

Question 25: Paragraph 3(g) of Schedule 1 to the Bill enables the Welsh Ministers to specify in regulations office holders, members and members of staff of bodies who are to be disqualified from being a non-executive member of the Authority. Why was this provision not included on the face of the Bill to provide clarity given that other disqualified persons are listed in paragraph 3(a) to (f)?

Response

It is considered that the list of disqualified persons set out in paragraph 3 of Schedule 1 to the Bill is sufficient and proportionate at the current time. There is no policy intention to use the regulation-making power to amend the list at present. However, having a regulation-making power to add to that list is necessary to keep the list of categories of person who must be disqualified from being appointed or holding office as non-executive members of the Authority up to date if, for example, a new public body were created.

Question 26: Paragraph 19(1) of Schedule 1 includes a Henry VIII power to amend the planning period for the Authority. Why do you consider this power to be necessary?

Response

Paragraph 19(1) of Schedule 1 to the Bill places a duty on the Authority to prepare a corporate plan for each planning period. Paragraph 19(9) provides that the meaning of planning period is (a) the period of 3 years beginning with 1 October 2027, and (b) each subsequent period of 3 years. Paragraph 19(10) gives the Welsh Ministers the power to amend sub-paragraph 19(9)(b) by regulations.

I am satisfied a three-year planning period is appropriate, and there are no current plans to amend it. However, I am conscious that once the Authority is established there may come a time when, based on practical, operational experience, the Authority may ask that consideration be given to changing the planning period. This could be an increase or a decrease in the current three-year term.

Question 27: How will cross border tips be dealt with under the Bill?

Response

There are a small number of disused tips that straddle the border between England and Wales (cross-border tips). Under the Bill, the Authority will have functions in relation to cross-border tips, and the relevant local authorities in England will have functions in relation to those tips under the 1969 Act.

The functions of the Authority, and of the English local authorities, will be exercisable in relation to those cross-border tips in their entirety, not just the parts of those tips that fall within the respective geographical areas. Therefore, cross-border tips will be subject to the regime established under the Bill (operated by the Authority) and the regime under the 1969 Act operated by English local authorities (situated along the border).

The Authority's powers are broad enough to enable it to co-operate with such local authorities when exercising its functions under the Bill.

Question 28: In your view, will further legislation be required in the near future in other areas of the law to accommodate the provision made by the Bill? For example, changes to planning or environmental legislation to assist with the implementation of the Bill?

Question 29: What would the timescales be for the preparation and introduction of the proposed legislation referred to in question 28?

Response

There are no plans to make changes to other legislation (such as planning and environmental legislation) to accommodate provisions made in the Bill.

The intention is that the Bill will work alongside existing laws and regulations, including planning and environmental legislation.

Question 30: Section 87 provides that some provisions of the Bill will come into force on 1 April 2027. Why will there be such a delay between Royal Assent and the relevant provisions coming into force?

Response

The establishment of any new body takes time and whilst 1 April 2027 is challenging, it is a realistic and sensible date.

We have a significant amount of work to do to ensure that everything is in place in readiness for the Authority to be operational. We are already looking at what has worked well in the establishment of other bodies in order to learn lessons from this. We now have a well-established implementation team that is already working on what is required in terms of recruitment, public appointments, IT needs etc. We cannot underestimate the quantity of work that is involved in establishing a body such as the Authority.

It is important to note that whilst the Authority will be established on 1 April 2027, Welsh Government and the MRA will continue work on disused tip safety until all the Authority's functions come into force. There will be no gap in provision. Appropriate transitional arrangements will be put in place to ensure there is continuity as we move forward.

Question 31: Is there a risk that delay in commencement of the provisions of the Bill may carry a risk that the protections offered by the Bill provisions are delayed or not fully brought into force by a future Welsh Government?

Response

Scrutiny to date suggests there is broad cross-party support for the Bill. I, therefore, think it is highly unlikely that a future government would fail to fully implement the Bill if enacted. A future government will, as a matter of law, be subject to an ongoing duty to do so, with the timing being the sole matter for the government. The Authority will, let's not forget, be undertaking absolutely vital functions relating to the stability of disused tips in Wales.

It is important that we make sure that all stakeholders are ready for the start of the new regime, there is a considerable amount of preparatory work that needs to be done, and an earlier start date poses a serious risk that the relevant systems, staff, secondary legislation and guidance would not be in place.

I can assure you that work on the coal tip safety programme will not stop, as the Bill progresses through the Senedd or when the Bill has passed – and we will make sure that we implement effective transitional arrangements so that the Authority hits the ground running.

I am also working closely with the MRA to ensure that its inspection programme continues. We have agreed that the MRA will have inspected and reported on every disused coal tip by 1 April 2027, including minimum inspection regimes for category C and D tips. This will provide the Authority with important information to build on and, of course, Welsh Government will continue to provide a coal tip safety grant.

There is a clear implementation plan and detailed work schedule to support delivery, this means that following Royal Assent we will be ready to drive forward implementation.

Question 32: Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation and guidance being fully in force?

Response

The Authority will be established on 1 April 2027.

To support it from day one, the intention is that any necessary guidance will be available and secondary legislation will be in force from that date.

Officials are already working on the timelines for the relevant subordinate legislation and guidance, taking into account consultation periods, and the need to engage with stakeholders, to ensure the deadline is met.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of the Authority’s duty to monitor registered tips

Introduction

The Bill establishes a regime of proactive monitoring to safeguard communities from the risk of tip instability. This document provides an outline of the guidance that will be given to the Authority by the Welsh Ministers in respect of its duty to monitor registered tips.

The Bill requires the Authority to monitor the stability, and threats to the stability, of each disused tip in the register. To do this, the Authority may carry out any inspections or other monitoring activities that it considers appropriate. Monitoring activities could include inspections, instrumentation, data capture and reporting activities.

Following registration, the Authority must monitor disused tips in the register. What monitoring is carried out will depend on the specific disused tip but could include gathering evidence on and considering the condition and stability of the tip and associated assets and infrastructure. The conclusion of these activities will assist the Authority in determining the shape of any maintenance works or one-off operations that are required to prevent or deal with threats to the stability of a disused tip or stabilise a disused tip or prevent it from becoming more unstable.

This document sets out an outline of the areas we expect guidance in relation to monitoring to cover. Further technical guidance will be issued by the Authority to cover operational matters.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aim of the guidance

This section will note that the guidance will have been developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning.

It will also explain the aims and purpose of the guidance on monitoring. It will include detail on, but not be limited to:

- how, in practice, the Authority will be expected to fulfil its duty to monitor disused tips in the register.

Frequency and timing of inspections

The Authority will conduct inspections and other monitoring activities as appropriate, in the performance of its duty to monitor registered tips and in pursuance of its main objective. The guidance will set out the minimum recommended frequency of inspection - this will vary depending on the tip’s category.

It is likely that the guidance will recommend that the current monitoring regime overseen by the Mining Remediation Authority should continue. It is possible that this may need to change depending on the impact of climate change and frequency of major weather events.

The guidance will include advice on the timelines of inspections, assessment and monitoring (for example, in relation to rural land, grazing and other farming activities should be considered) and when planning routine works, certain activities that are

seasonal, such as lambing should be considered.

Providing guidance on monitoring will enable flexibility to update and amend the guidance as needed and at pace if required. This will ensure a robust and future proofed regime that can adapt and change to take account of the impact of climate change, the development and availability of new technologies and give the Authority flexibility to adapt its approach to monitoring and inspection processes.

Category 1 and 2 registered disused tips

The guidance will set out the expectation that the Authority should carry out the first inspection of a category 1 or 2 disused tip within 6 months, beginning with the day on which the tip is added to the register. The Authority will be expected to carry out subsequent inspections at the intervals specified in the table below.

Table 1 - Intervals of inspections

Category of registered tip	Recommended frequency of inspection
Category 1	Twice annually
Category 2	Annually

Category 3 and 4

The guidance will set out that it will be considered good practice for the Authority to carry out inspections on category 3 and 4 disused tips at the recommended frequency shown in the table below:

Table 2 - Intervals of inspections

Category of registered tip	Recommended frequency of inspection
Category 3	3 to 5 years
Category 4	5 to 10 years

The guidance will also outline the expectation that the Authority should inspect high risk tips on an ad hoc basis when there has been a major event (such as a storm or prolonged period of heavy rainfall) in an area or when technology indicates that thresholds for intervention have been met.

Non-coal disused tips

The guidance will outline that the Authority intends to prioritise the assessment of disused coal tips, however if has reason to believe that a non-coal tip poses a threat to human welfare the Authority is able to assess that tip. It is estimated that the Authority will begin to assess disused non-coal tips six years after the Authority is established(2032-2033). Once registered, all tips (coal and non-coal) will be inspected according to their categorisation.

Reporting

The guidance will set out the expectation that when the Authority carries out an inspection it should:

- set out the conclusions of the inspection in a report (an “inspection report”)
- add the date of the most recent inspection to the register of disused tips

The guidance will set out the expectation that, as a minimum, an inspection report should include:

- **Administrative information:**
 1. unique identifier of the tip
 2. the tip's category
 3. location of the tip
 4. name of Inspector
 5. date of current and last inspection.
- **Technical Information**

Table 3 – Examples of the type of technical information

1. Geotechnical	Tension cracking, hummocking, subsidence, erosion
2. Drainage	Channels, culverts, headwalls, trash screens
3. Engineering Infrastructure	Retaining structures, retention systems
4. Instrumentation & Monitoring	Rain Gauge, flow meter, survey points
5. Contamination & Geo-environmental	Pollution, hazardous materials, invasive species

The guidance will set out the expectation that, in the production of an inspection report, the Authority should include any recommendations for activities or operations to improve or secure the stability of a disused tip.

Competency

An inspection should only be conducted by a “competent person”. A competent person means an individual who has sufficient training, knowledge and experience to carry out the activity. The guidance will recommend that the Authority prescribes the necessary skills and qualifications needed in this regard and the expectation that the Authority will take the lead in skills development and build the necessary resource capacity and capability in Wales.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders.

FAQs

This section would set out an expectation that the Authority will publish an FAQ document.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of appeals to be determined by PEDW

The information contained within this guidance relates to procedures in Wales only.

Guidance

This document sets out an outline of guidance that will be issued by the Welsh Ministers in respect of appeals made under the Disused Mine and Quarry Tips (Wales) Bill (the “Bill”).

The guidance will set out when appeals can be made, and which appeals will be determined by a person appointed by the Welsh Ministers and which will be determined by the courts.

The guidance will focus on appeals to be determined by a person appointed by the Welsh Ministers. The intention is that the Welsh Ministers will appoint Planning and Environment Decisions Wales (PEDW) to be that appointed person to determine such appeals. PEDW already carries out a similar role on behalf of Welsh Ministers in relation to (but not limited to) planning and environmental appeals.

The guidance will be aimed at PEDW, for the purposes of its role as “appointed person” under the Bill. PEDW must have regard to the guidance given by the Welsh Ministers when determining relevant appeals under the Bill.

The guidance will set out that PEDW will determine appeals against a section 33 notice and applications for reimbursement of an owner’s expenses when a section 33 notice has been cancelled.

The Welsh Ministers will make regulations about the procedure to be followed by PEDW when determining such appeals/applications. This guidance will sit alongside those regulations and provide clarification on the practical application of those provisions.

Aim of the Guidance

This section will note that the guidance will be developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning. The aim of the guidance is to provide clarification on how the appeals to be determined by PEDW will operate in practice.

By way of example, the text below provides an indication of the type of information that the guidance will include:

- clarification that the expectation is that, in the main, appeals will be determined by way of written representations. In most cases, this is likely to be - the quickest, simplest and most cost-effective way of deciding an appeal
- the factors that PEDW might consider when deciding whether an oral hearing is warranted
- clarification that the expectation is that there may be circumstances where PEDW may want to visit the relevant site as part of the appeal determination
- information about when it might be appropriate for parties or witnesses to attend a hearing, and about the examination of those parties or witnesses

- reflecting what will be included in regulations (referred to above), the guidance will contain additional information explaining relevant powers to enter land and the creation of offences for failure to comply with requirements imposed under the regulations.

Appeals

Once the Authority is established one of the key responsibilities will be to build relationships with stakeholders and, in particular, with owners of disused tips. The guidance will explain that it is expected that a focus on building relationships will help to reduce the need for notices and subsequent appeals, as the Authority will have established routes for dialogue and engagement with stakeholders.

The guidance will explain that PEDW will determine appeals against notices issued by the Authority requiring an owner to carry out operations on their land. These appeals may be from the landowner(s) or anyone who receives a copy of the notice as a person with an interest in the notice. The guidance will clarify the grounds on which an appeal against such a notice can be made to Welsh Ministers.

One such ground relates to hardship i.e. an owner of land who is given a notice under section 33 may appeal on the ground that the owner is unable to meet the costs of the operations required by the notice. In the guidance, we intend to provide details of the circumstances when this ground may be relied upon. Failure to comply with a section 33 notice, without reasonable excuse, is an offence. The guidance will set out that part of the motivation for allowing an appeal on the basis of financial hardship is to avoid a person committing a criminal offence because they could not afford to comply with the notice. The guidance will also explain and provide example scenarios illustrating how these provisions will work in practice where there is more than one owner of a disused tip.

The guidance will explain that the other application to be determined by PEDW under the Bill is where an owner applies to the Welsh Ministers for reimbursement of expenses from the Authority, if those expenses were incurred in complying with a notice that the Authority has cancelled.

The guidance will note that when making such determinations, PEDW can consider evidence, for example, documents, quotes, notes of research, correspondence between the owner and the Authority which will help PEDW to form a view as to whether a section 33 notice should be varied or cancelled or whether the expenses claimed are reasonable.

The guidance will provide examples of the types of evidence that might be considered, such as (but not limited to):

- evidence from experts
- photographic evidence of damage or how enjoyment of land has been interfered.

Timescales

The guidance will reflect what is contained in the regulations in terms of the timescale for making an appeal to Welsh Ministers.

The guidance will set out that there will be an expectation that PEDW will take all practical and reasonable steps to ensure that applications are to be determined as expeditiously as possible and in accordance with the regulations made by the Welsh

Ministers. The guidance will encourage the Authority to provide information on its website for landowners regarding the appeals process.

The guidance will explain that the varied nature of the grounds of appeal and the likely differing complexity of the factual circumstances surrounding each appeal – for example some land may have multiple owners – means that it is not considered appropriate to set a time limit within which PEDW must determine every appeal. Some appeals will be determined on the basis of written representations, whilst others may involve PEDW entering and inspecting land or the examination of expert witnesses. What is considered to be a reasonable timeframe for the determination of one appeal will therefore be different to what is considered reasonable in another appeal.

The guidance will also note that, in determining an appeal some of the tasks that PEDW will need to undertake could include, but will not be limited to:

- preparation for any site visit
- carrying out any site visit- and
- writing the decision.

The guidance will set out the expectation that PEDW will deal with the administration of relevant appeals from receipt and validation of the application to the issue of the appeal decision. Appeals will be administered in line with the procedures set out in regulations.

Should a hearing be considered appropriate, PEDW will be responsible for organising it.

Making an appeal to the courts

The guidance will refer to the appeals, applications and disputes arising under the Bill that will be determined by the court. For example, a person who is given a demand by the Authority for expenses incurred by the Authority in carrying out operations, may apply to the court for an order varying or cancelling that demand. Welsh Ministers do not propose to issue guidance to the courts in respect of applications/disputes to be determined by the court under the Bill.

Responsibilities

The guidance will clarify the responsibilities of the Welsh Ministers in respect of appeals to be determined by PEDW, and the responsibilities of PEDW when determining such an appeal on behalf of the Welsh Ministers. For example, the guidance will explain that, under the Bill, Welsh Ministers must notify the Authority and each person who was given a copy of the relevant section 33 notice, when an application under section 36 is received.

The guidance will also make clear that all parties are expected to behave reasonably during the appeals process.

Costs

The guidance will clarify that there will be no charge to make an application to the Welsh Ministers under the Bill; however, all parties to an appeal are responsible for meeting their own appeal expenses.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders

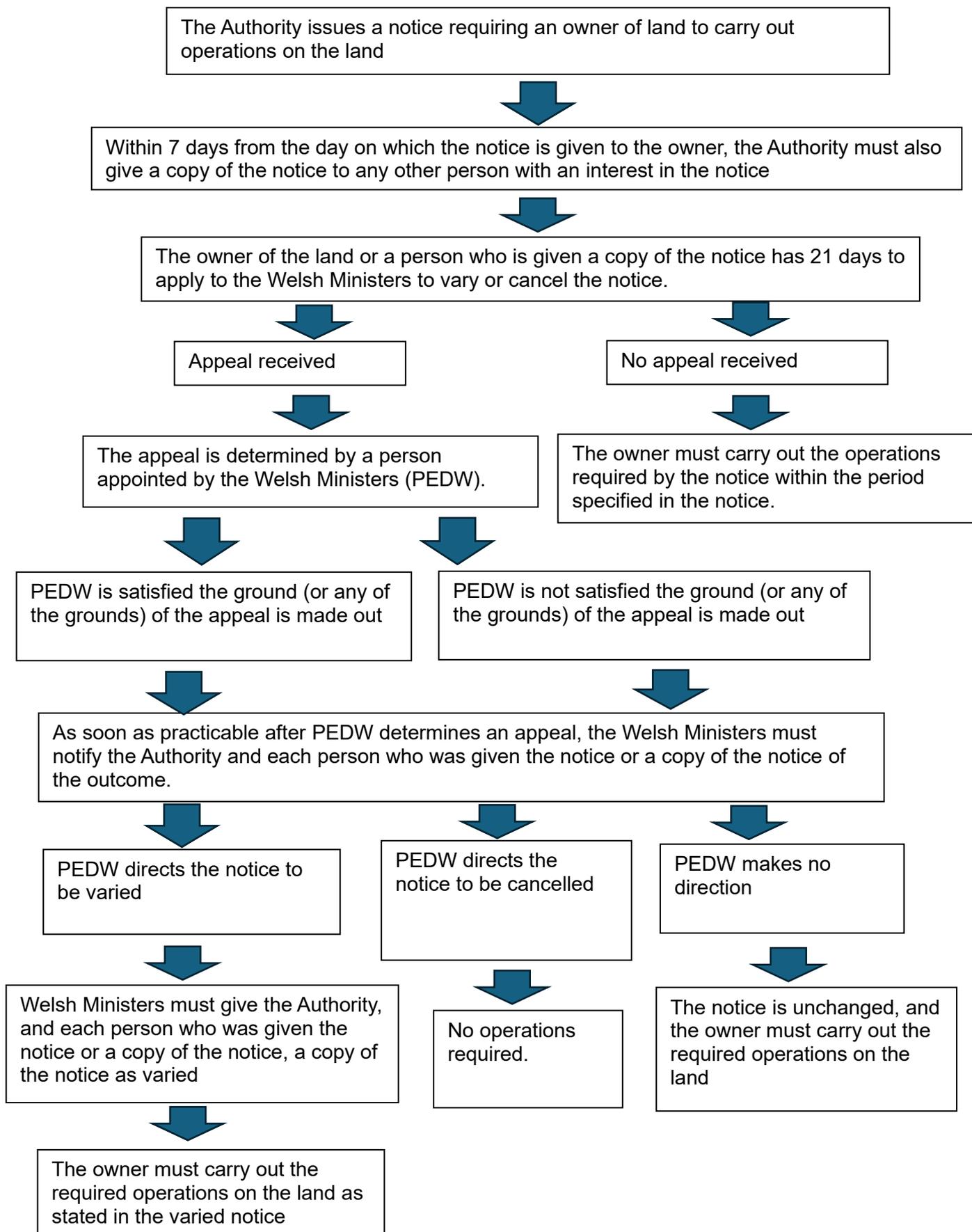
FAQs

This section would set out an expectation that the Authority will publish an FAQ document about how someone might make an appeal.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Annex 1: Appeals by owners and interested parties against a notice to carry out operations



Disused Mine and Quarry Tips (Wales) Bill - Indicative Guidance in respect of Compensation

Introduction

This document provides an outline of guidance that will be given to the Authority by the Welsh Ministers in respect of compensation provisions in the Bill (sections 31 and 48). The guidance will set out in a straightforward way an explanation of the provisions in the Bill on compensation and provide details about how the provisions work, and expectations in respect of compensation.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aim of the guidance

This section will note that the guidance has been developed in collaboration with key stakeholders, such as the Mining Remediation Authority, Natural Resources Wales and other public bodies.

It will also explain the aims and purpose of the guidance on compensation, including detail on (but will not be limited to) the following:

- when and who may be entitled to claim compensation under the Bill;
- an explanation of how compensation fits in the wider context of the management regime;
- an overview of potential scenarios illustrating how the entitlement to compensation will work;
- details on the procedure to follow when there is an entitlement to compensation; and
- information about dispute resolution.

The right to compensation

The Bill includes provisions for compensation and allows for claims if operations or investigations have damaged any land, property, or the enjoyment of land has been disturbed. There is also an entitlement to compensation if property is removed or disposed of because of operations carried out.

Eligible individuals will have the right to seek compensation from the responsible parties:

- the landowner carrying out the operations to in compliance with a notice (section 33),
- the Authority carrying out an inspection or other monitoring activity, a preliminary or a full assessment (section 31), and
- the Authority carrying out operations or any consequential works of reinstatement (section 42) and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

Landowners and others can seek compensation from the Authority, except when damage is due to their own or prior owners' operations.

The right to compensation in the wider context of the management regime.

The guidance will set out different factors which may be considered in respect of a claim for compensation, for instance:

- the type of land (e.g. urban, rural, residential, agricultural)
- the nature of damage to property and/or estate (e.g. structural repair, subsidence, waterlogging)

- the nature of disturbance to land (e.g. noise, dust and vibrations from heavy machinery)
- proportion of relevant land owned.

Given the complexity of ownership, the guidance will provide advice to the Authority in respect of the Welsh Ministers' expectations as to how to determine compensation when multiple owners are involved. The guidance will set out the factors that the Welsh Ministers expect the Authority to consider so that compensation is equitable.

Potential scenarios illustrating how the right to compensation will work.

This section of the guidance will set out the context in respect of the right to compensation in the Bill:

a) Compensation for damage, loss or disturbance following inspection, monitoring activity or assessment

The guidance will make clear that there is an entitlement to compensation from the Authority if the Authority carried out:

- an inspection, or other monitoring activity, a preliminary or a full assessment (section 31)
- or any consequential works of reinstatement (section 42)
- and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

b) Compensation for damage, loss or disturbance following operations carried out in compliance with a notice.

The guidance will also make clear that there is an entitlement to compensation from the landowner if the landowner carried out operations in compliance with a notice (section 33).

The guidance will clarify those persons with an entitlement to claim compensation as outlined below:

- If the landowner carried out the operation (section 33)
- If the Authority carried out assessment, inspections, monitoring activity (section 48) any consequential works of reinstatement (section 42) and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

- Damage to land** – Any person with an estate or interest in the land
- Damage to other property** – The owner of the property
- Removal or disposal of other property** – The owner of the property
- Disturbance to a person's enjoyment of land** – The person whose enjoyment is disturbed

An overview of the claims for compensation is attached **at Annex 1**.

Examples of possible damage, loss or disturbance

a) Damage to land

Access routes across agricultural land used to undertake investigatory works, sustain damage due to the higher ground pressures experienced during the mobilisation and demobilisation of specialist plant to support works.

b) Damage to other property

A gate securing access to land adjacent to a disused tip is damaged in the mobilisation of equipment to undertake operations at a disused tip.

c) Removal or disposal of other property

A landowner had a shed that is used to shelter sheep during lambing season, however the shed had to be removed (and during the course of removal, was damaged to such an extent so that it could not be returned) to allow operations to be carried out on the land.

d) Disturbance to a person's enjoyment of land

A campsite needs to be temporarily closed whilst operations are being carried out and the landowner suffers a drop in income as a result, or where a farmer is not able to farm on a particular piece of land during operations.

Indicative process to follow when seeking compensation.

This section of the guidance will explain the procedure to follow when seeking compensation from the Authority or from an owner of land.

The guidance will explain that the Authority intends to put in place a digitally enabled service to receive compensation claims, with a pre-defined approval process (based on the type of compensation claim) behind it to progress the claim as quickly as possible. When submitting a claim for compensation to the Authority, claimants would be required to complete a form within a set deadline and to enclose supporting documentation.

By way of explanation, the information required to complete the claim form would cover personal information (e.g. name, postal and digital address) and administrative data (e.g. Tip ID and/or notice number, type of claim and financial claim value) and claimants would be required to provide relevant evidence, for instance copies of all paperwork that will help to assess the claim, including photographic evidence of damages.

The claim form will be available in an accessible and bilingual digital and paper format and the claim could be submitted online and by post to the Authority.

The Authority will issue a compensation policy detailing the process and the timeframes for responding. The policy will be published on the Authority's website

Dispute Resolution

The guidance will explain that any dispute arising from a claim for compensation sought from the Authority or an owner of land for damage of land and/or property and for disturbance to the enjoyment of land will be determined by the court.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how guidance will be reviewed and updated. This will be done in discussion and engagement with relevant stakeholders.

Frequency asked questions (FAQs)

This section would set out an expectation that the Authority will publish an FAQ document on compensation.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of

its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Annex 1

Table 1: Claims for compensation

Section	Activity which can give rise to a claim	Compensation which can be claimed	Claim can be made by	Claim made to	Body who determines disputes
Section 31	Compensation for damage or disturbance as a result of inspections, monitoring activity or assessments undertaken by the Authority	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 31	Compensation for damage or disturbance as a result of inspection, monitoring activity, or assessments undertaken by the Authority	damage to other property	The owner of the property	The Authority	the Courts
Section 31	Compensation for disturbance or damage as a result of inspection, monitoring activity or assessments undertaken by the Authority	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts
Section 48(1)(a)	Compensation for damage as a result of operations carried out by an owner of land to comply with the requirements of a notice issued by the Authority (under section 33) or any consequential works of reinstatement	damage to land	Any person with an estate or interest in the land	The owner of the land	the Courts
Section 48(1)(a)	Compensation for damage as a result of operations carried out by an owner of land to comply with the requirements of a notice	other property, which is damaged, removed or disposed of	The owner of the property	The owner of the land	the Courts

	issued by the Authority (under section 33) or any consequential works of reinstatement				
Section 48(1)(a)	Compensation for disturbance as a result of operations carried out by an owner of land to comply with the requirements of a notice issued by the Authority (under section 33) or any consequential works of reinstatement	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The owner of the land	the Courts
Section 48(1)(b)	Compensation for damage to land as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 48(1)(b)	Compensation for damage to property as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	other property, which is damaged, removed or disposed of	The owner of the property	The Authority	the Courts
Section 48(1)(b)	Compensation for disturbance as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts
Section 48(1)(c)	Compensation for damage to land as a result of investigations carried out by the Authority (under section 53) to determine whether operations are required.	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 48(1)(c)	Compensation for damage to other property as a result of investigations carried out by the	other property is damaged,	The owner of the property	The Authority	the Courts

	Authority (under section 53) to determine whether operations are required				
Section 48(1)(c)	Compensation for disturbance as a result of investigations carried out by the Authority (under section 53) to determine whether operations need are required.	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts

Disused Mine and Quarry Tips (Wales) Bill Indicative Guidance - Powers of the Authority to Recover Costs

Introduction

This section of the guidance will provide a description of the powers of the Authority to recover costs and the approach and procedures which must be followed when these powers are exercised by the Authority.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

The guidance will set out the sections of the Bill which relate to cost recovery, explain their meaning and provide examples, where appropriate, of how costs recovery will work in practice.

Relevant provisions

Necessary operations

Under section 33 of the Bill, the Authority may issue a notice requiring an owner of land to carry out operations on the land if the Authority considers it necessary to achieve the objective of:

- preventing, or dealing with, threats to the stability of a disused tip or
- stabilising a disused tip or preventing a disused tip from becoming more unstable

so as to avoid or reduce threats to human welfare.

In addition, under section 42 of the Bill the Authority may carry out operations on any land it considers necessary to do so to achieve the objective set out above (subject to relevant notice provisions in section 44). This power is intended to be used in circumstances such as those where the Authority believes that owners are unable or unwilling to undertake the work themselves or following a successful appeal against a section 33 notice.

Where the Authority carries out operations, it may also carry out any consequential works of reinstatement that it considers are reasonably necessary.

Recovering Costs

Under section 51(1) of the Bill, where the Authority has carried out operations, it may issue a demand to the landowner (the person who was the owner when the Authority started to carry out the operations) to recover reasonable costs associated with:

- investigations which resulted in the Authority carrying out operations on the land
- operations and any works of reinstatement undertaken by the Authority
- any compensation that is recoverable from the Authority under section 48.

Under section 51(2), where the Authority has carried out investigations that resulted in a notice requiring the landowner to carry out operations, the Authority is entitled to recover,

from the landowner (the person given the section 33 notice), reasonable costs associated with:

- the carrying out of those investigations
- any compensation that is recoverable from the Authority under section 48.

Where a contribution order has been made, the Authority may recover costs from a contributory.

Right to appeal against the recovery of costs

Under section 52 landowners and contributories may apply to the court to vary or cancel a demand for the recovery of costs issued by the Authority.

Guidance will set out when owners may make an appeal against the recovery of costs.

Charging fees

The guidance will explain the provisions of the Bill which give the Authority the power to charge a fee.

Under section 3, the Authority may charge a fee for the provision of information, advice or assistance.

In addition, under section 68 the Authority may charge a fee for administrative, professional or technical services to any devolved Welsh authority.

Cost recovery

Public law principles

As a public body, the Authority will be subject to the principles of public law, meaning it will need to be reasonable and proportionate in its activities to recover costs and charging for advice and services and the guidance will iterate this.

Avoiding the need for the Authority to undertake works under section 42

The Bill is preventative in nature – it establishes a new regime for managing tips to ensure disused tips and are properly maintained to address tip instability. The guidance will provide advice on establishing an effective management regime which, through earlier intervention to prevent tip instability, will reduce the need for the Authority to undertake operations under section 42, particularly those operations which need to be carried out immediately.

The guidance will also provide advice on providing information, advice and assistance to landowners with little, or no, knowledge about managing disused tip instability to reduce the need for the Authority to undertake operations under section 42.

Providing information, advice and assistance will enable landowners to become familiar with, understand and engage in the inspection and monitoring regime and will support the ability and willingness of private landowners to maintain disused tips and, where required, to undertake operations required under a section 33 notice.

Guidance will set out the expectation that the Authority should provide information, advice and assistance to landowners to support them to undertake general maintenance to ensure disused tips remain stable and to understand:

- how any operations recommended or required by the Authority will address tip instability or threats to tip instability;
- how to undertake certain operations to maintain tips or to undertake operations recommended or required by the Authority;
- the potential costs involved in maintaining a tip to ensure stability or to undertake certain operations recommended or required by the Authority
- how the costs to the landowner could be offset through contributions from others
- how applications to the Coal Tip Safety Grant can be made.

Charging fees for information, advice and assistance

The Authority has discretionary powers to charge fees for the information, advice and assistance it provides.

The guidance will align with HM Treasury guidance Managing Public Money¹ and will set out the expectation that the Authority will develop a full cost recovery model to the information, advice and assistance it provides to landowners, where appropriate. The guidance will provide advice, and examples, about the circumstances which should be considered when deciding what forms of information, advice and assistance will incur a fee, factors that should be taken into account when setting fee levels and the circumstances in which it may be appropriate to waive certain fees, in full or in part.

The guidance will clarify that the Authority must not charge for a service where the Welsh Government has provided the Authority funding for the provision of that service, this includes, for example:

- general information provided to owners, interested parties and the public
- advice to landowners about routine maintenance and operations required to be undertaken on a particular tip
- tip inspections
advice and assistance to develop a management plan.

Informing landowners about the cost of carrying out investigations and operations

The guidance will clarify that, other than where operations need to be undertaken immediately, the Authority must provide the owner of the land and interested parties with 21 clear days' notice of its intention to carry out operations. The notice must specify:

- the disused tip in connection with which the notice is given,
- the nature and extent of the proposed operations and of any proposed consequential works of reinstatement, and
- the threat to human welfare that the operations are intended to avoid or reduce.

In addition, the guidance will set out the expectation that the Authority will generally provide additional information to all landowners well in advance of operations being undertaken, so they are fully informed about:

- the reason why any investigations are/were necessary to inform the operations which are necessary and the costs of those investigations;
- why the operations are required, the estimated costs and whether the owner can seek to reduce the costs incurred to them through, for example, seeking a contribution order or securing funding via the Coal Tip Safety Grant Scheme towards the costs;
- when the costs are likely to become payable;
- details about arrangements which could be put in place should the landowner not be in a position to pay the costs when due; and
- information about how to appeal against the costs.

In exceptional circumstances, it may not be possible for the Authority to provide the additional information to all landowners in advance of investigations and operations being undertaken under section 42. This could include where the Authority has not had the opportunity to engage with the owner because operations needed to be undertaken by the Authority immediately (section 44(3)(a)) or in cases where the owners of the land could not be traced.

In such cases, the guidance will set out an expectation that the Authority should provide the landowner with the additional information as soon as reasonably practicable.

Invoicing the landowner for investigations and operations undertaken

The guidance will clarify that where the Authority is seeking to recover costs from a landowner for investigations or operations, the Authority must send a demand to the owner setting out:

- the sum claimed by the Authority from the person;
- if the demand is given to a contributory, the total amount in respect of which the contribution is claimed;
- if the demand is given to the owner of the land, the sums (if any) that the Authority is entitled to recover from any contributory or contributories; and
- the separate amounts which comprise the total amount recoverable by the Authority, broken down by reference to the relevant investigations, operations and compensation (section 51(5)).

As well as the information which must be included in a demand, the guidance will set out the expectations that the following additional information should be included with the demand:

- what the landowner can do if they are unable to pay the costs
- information about the right to appeal against the costs, including the timeframe in which an appeal must be made and contact information for who an appeal can be made to
- information about how the Authority might be able to support dispute resolution and contact information for other organisations which can support owners in making appeals about costs.

The guidance will set out the recommended timeframe within which demands should be sent following the completion of investigations and operations and set out that the Bill allows six weeks for landowners and contributors to lodge an appeal against the demand.

Proportionate costs for investigations and operations

The guidance will set out expectations that the costs being recovered must be reasonable and proportionate.

To support the Authority to demonstrate it is complying with public law, the guidance will include advice about ways that the Authority can demonstrate to the owner that the costs it is seeking to recover are proportionate and reasonable. This will include providing information about:

- ways in which the Authority can demonstrate the specific investigations and/or operations were necessary to investigate and/or address tip instability and/or a threat to tip instability
- how the operations were proportionate – for example, where the approach taken avoids the need to undertake unnecessary work or larger scale work
- due diligence undertaken when commissioning and appointing contractors involved in the work, ensuring the contractors were competent to undertake the work and that the procurement process was competitive.

Approach to recovering costs for operations under section 42 where agreement can not be reached

In most instances, it is expected that the approach taken by the Authority, including engagement with the landowner and the use of management plans, will reduce instances of disagreement between the landowner and the Authority regarding the costs being recovered.

It is recognised, however, that there will be situations where the landowner does not agree with the cost and, on that basis, is unwilling to reimburse the Authority for the operations undertaken under section 42.

The guidance will provide advice on approaches the Authority could use to avoid court action.

The guidance will set out advice to the Authority about resolving disagreements. This will include providing information and examples of actions the Authority can take to engage and reach agreement with landowners in relation to costs. The guidance will provide information about using independent services such as the use of dispute resolution or mediation services, that might be able to assist with this.

Approach to recovering costs where the landowner is unable to pay

As set out in the regulatory impact assessment, it has been assumed (based on the experience of the reservoir policy) that 75% of costs incurred by the Authority in undertaking operations which are required immediately, will not be recoverable.

The guidance will, however, set out the expectation that the Authority will recover costs in situations where pursuing the costs would be cost-effective and fair. The guidance will also provide examples of situations where it would not be cost-effective or reasonable for the Authority to pursue payment. This would include, for example, where a landowner is unable to work due to age or long-term illness and does not have significant savings or liquid investments.

In addition, the guidance will set out that, where appropriate, the Authority may suggest a repayment plan and provide examples of the financial circumstances which should be considered when deciding whether it would be appropriate to implement a repayment plan.

The guidance will also include advice on charging interest on outstanding sums, including matters the Authority should consider when determining the rate of interest and whether it would be appropriate to charge interest in cases where a repayment plan has been agreed or where an appeal is being pursued.

Recovering costs where the landowner is unwilling to pay

In rare occasions, where a landowner can pay the costs demanded by the Authority but is unwilling to do so, despite attempts made by the Authority to resolve any disagreements, the guidance will set out the options available to both parties.

As set out above, landowners have a right to appeal against the Authority's demand for payment against costs demanded and the guidance will set out the expectation that the Authority will include information about these rights when invoicing the landowner.

Where reasonable and proportionate, the Authority may pursue court action to recover costs, such as applying for a county court judgment.

The guidance will provide advice about the circumstances where it would be appropriate for the Authority to consider court action.

Recovering costs from multiple landowners

The Authority can carry out operations on any land if it considers necessary to do so. Any land includes both the land on which the disused tip is situated and land in the vicinity of a disused tip which has, or could have, an impact on the stability of that tip.

Landownership is complex. The land on which tips are located are in some cases solely owned by an individual, a local authority, a company or a charity and in others are owned by multiple individuals and/or bodies. It is likely that the ownership of land in the vicinity of a disused tip could be equally complex.

Given the complexity of land ownership, the guidance will set out that it is unlikely that one approach will be appropriate for recovering costs. The guidance will, therefore, provide advice on strategies which can be adopted to recover costs where there are multiple owners or a number of contributories. The guidance will provide advice around factors which should be considered to ensure cost recovery is equitable.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose. This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders

FAQs

This section would set out an expectation that the Authority will publish an FAQ document.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourage the use of Welsh throughout all its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of Management Plans

Note: The information contained within this guidance relates to procedures in Wales only.

Introduction

Whilst the Bill does not require the production of management plans, these will be important to the application of the regime. The purpose of a management plan will be to detail tip specific information, and to provide a proactive, proportionate management strategy for a disused tip. This will include information and the details necessary to monitor and maintain the disused tip safety, alongside specific information on identifying and managing risks and the development of tip specific contingency plans. Management plans will be informed by the tip assessments and categorisation undertaken by the Authority.

This document provides an outline of guidance for the Authority on management plans.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aims of the Guidance

This section will note that the guidance will be developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning.

It will also explain the aims and purpose of the guidance on management plans. It will include detail on, but will not be limited to the following:

- how, in practice, the Authority will be expected to implement the guidance on management plans
- how management plans fit in with the wider regime, such as monitoring and inspection, appeals etc.
- expectations in respect of the minimum content of management plans and inspections/appraisals
- the roles and responsibilities of the Authority and its interaction with other public bodies.

Setting out advice on management plans in guidance will enable flexibility to update and amend the guidance as needed and at pace if required. This will ensure a robust and future proofed regime that can adapt and change to take account of the impact of climate change, the development and availability of new technologies and give the Authority flexibility to adapt its approach to monitoring and inspection processes.

The guidance will include an expectation that the Authority will provide information for private tip owners so that they know what to expect in respect of management plans. How this will be made available will be at the discretion of the Authority.

What will the guidance include

The Authority will have discretion as to how management plans will be produced. The guidance will make it clear that the expectation is that all Category 1 and 2 disused tips have a plan in place, as these are the highest risk category of tips. It will be for the Authority to consider and have the discretion to decide whether a management plan is appropriate for individual Category 3 and 4 disused tips. This will be done on a case-by-case basis.

The guidance will outline the expectation that management plans should contain the complete picture of how a disused tip should be managed, including, where appropriate, references to best practice. A management plan should include details regarding the minimum frequencies of monitoring activities and circumstances in which additional inspections should be carried out. Our thinking is that management plans should include details such as (but not limited to):

- a record of tip specific information
- how the Authority plans to carry out monitoring activity
- the circumstances in which the Authority may carry out additional inspections
- a description of any one-off operations the Authority considers would remove or reduce threats to the stability of the tip
- a timetable for carrying out the operations, and
- the arrangements for an effective response to any emergencies arising in relation to the tip.

The management plan for a particular tip will be informed by that tip's assessment and categorisation, which will have been undertaken by the Authority.

The Authority will provide routine maintenance advice to disused tip owners via management plans and inspection reports, and which, if necessary, will include recommended work to ensure the stability of a tip, or to ensure that the tip does not pose a threat to human welfare.

Emergency Preparedness

The guidance will also cover issues such as emergency preparedness and incident response. We recognise that each disused tip location is unique, therefore we would expect each management plan to detail the specific potential hazards, receptors at risk, emergency scenarios and response strategies relevant to each disused tip.

The guidance will set out the expectation that management plans should include details regarding emergency preparedness, incident response and the remedial strategy and how this has been developed and agreed with statutory bodies (local authorities, NRW) in respect of that particular disused tip.

Furthermore, the guidance will set out the expectation that management plans demonstrate consideration of potential site-specific constraints which may dictate emergency preparedness, incident response and remedial strategy. These constraints could include, but are not limited to:

- proximity of ecologically designated sites
- location of adjacent critical infrastructure, and
- interactions with designated water courses.

The guidance will make clear the expectation that the Authority will work with other bodies to develop management plans for disused tips within their ownership, and the Authority will also be expected to produce management plans for private tip owners, who for whatever reason are unable to or refuse to produce a management plan. We expect that all management plans are signed off by the Authority.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders.

FAQs

This section would set out an expectation that the Authority will publish an FAQ document.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourage the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of the Authority’s duty to assess disused tips

Introduction

The Bill establishes a regime which includes the assessment of all disused tips in Wales. This is to ensure that each disused tip is assessed and categorised where appropriate. Each tip in the register will be subject to ongoing monitoring by the Authority. This document provides an outline of the guidance that will be given to the Authority by the Welsh Ministers in respect of its duty to assess disused tips.

The approach to preliminary and full assessments will be the same for disused coal and non-coal tips – the reports of each assessment should record, appraise and evaluate every characteristic of a disused tip which may influence its stability, and assess any potential threat to human welfare by reason of instability.

The Bill requires the Authority to compile and maintain an electronic register of disused tips. As part of the process of determining whether to include a tip in the register, the Authority must:

- carry out a preliminary assessment in relation to every disused tip, to identify tips that may need to be included in the register;
- produce a report for each preliminary assessment;
- carry out a full assessment of those tips identified by a preliminary assessment as ones that may meet the criteria for registration and therefore, may need to be included in the register;
- in certain circumstances, carry out a full assessment of tips that are already in the register; and
- carry out an additional preliminary assessment in relation to a disused tip where it is considered appropriate, because of a change in circumstances, or if information becomes available that was not available during the previous assessment,
- produce a report for each assessment.

This document sets out an outline of the areas we expect guidance in relation to assessments to cover. Further technical guidance will be issued by the Authority to cover operational matters.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aim of the guidance

This section will note that the guidance will have been developed in partnership with relevant stakeholders, experts etc, to ensure that it has been informed by relevant best practice, ongoing operational experiences and learning.

It will also explain the aims and purpose of the guidance on assessments. It will include detail on, but not be limited to:

- how, in practice, the Authority will be expected to fulfil its duty to assess disused tips in Wales
- methodology for preliminary and full assessments.

The Bill sets out what is meant by “preliminary assessment” and “full assessment”. It lists what must be considered as part of the full assessment.

Preliminary Assessment of a disused tip

The Bill requires the Authority to prepare a programme setting out its proposed approach to, and a timetable for, carrying out preliminary assessments. The Authority will be required to send the programme to the Welsh Ministers for approval before the end of March 2028. Once the programme has been approved by the Welsh Ministers, the Authority must publish the programme. Revisions to the programme can only be made with the approval of Welsh Ministers, and the revised programme must be published as soon as practicable.

The guidance will set out the expectation that when carrying out preliminary assessments, the Authority will initially prioritise tips that currently fall within categories C and D - the tips with a higher risk potential. This approach would expedite the inclusion of those tips which pose a potentially higher threat to human welfare, into the new regime. The guidance will set out that existing data from the Mining Remediation Authority (MRA) on disused coal tips will inform decisions on prioritisation for preliminary assessments. It is expected that, before April 2027, all Category A, B, C and D disused coal tips (currently totalling 2,272) will have been inspected at least once by the MRA as part of the national programme of tip inspections.

The Authority will be required to undertake a preliminary assessment of all disused tips. What this means is that the Authority will assess whether it appears that the criteria for registration may be met in relation to each disused tip.

A preliminary assessment will generally be a desk-based exercise to enable the Authority to identify which tips potentially pose a risk to human welfare. This will inform whether a full assessment will be required.

The guidance will set out what a preliminary assessment will involve, and what each assessment will be expected to include, such as a review of:

- review of information provided by the MRA following their inspection
- any historical mining activity, including mine plans and abandonment records, relevant to the site;
- historical mapping products relevant to the site;
- topographical survey records relevant to the site;
- appraisal of any relevant information relating to monitoring or management activities at the site; and
- potential receptors to be considered in the assessment, such as residential or commercial property, utilities infrastructure or transport routes which could be impacted in the event of tip instability.

Preliminary assessments will assess whether it appears that the criteria for registering a disused tip may be met. By the time the Authority is operational in April 2027, the expectation is that the Mining Remediation Authority will have finished its physical inspection of all disused coal tips in Wales. The reports from those inspections will be available to the Authority when it carries out preliminary assessments. It is not envisaged that a new physical inspection of disused tips will be conducted at preliminary assessment stage. A physical inspection of the disused tip will be conducted at the full assessment stage. A full assessment is conducted if, based on a preliminary assessment, it appears to the Authority that the criteria for registration of the tip may be met.

Additional Preliminary Assessment of a disused tip

The Authority will be required to carry out additional preliminary assessments where it is considered necessary because:

- there are changes in circumstances at the site or in the vicinity. Examples include instances where:
 - land or property development adjacent to the site which introduces or increases the potential impact on receptors
 - changes in land use which may influence the engineering performance of the site
- information becomes available that was not available during the previous assessment.

The assessment will be the same as outlined above for a preliminary assessment.

Full Assessment of a disused tip

Following a preliminary assessment, if it appears to the Authority that the criteria for registration may be met, the Authority must carry out a full assessment on a tip and produce a report of the assessment.

An assessment will not only consider what could potentially be impacted by a tip failure but will also consider whether a potential threat of instability exists. An assessment will analyse whether there are factors that may influence or impact the stability of a tip, including those located off the body of the tip itself.

The guidance will set out advice on what a full assessment should involve, and what each assessment will be expected to include, such as:

- a detailed geotechnical appraisal and, where necessary, a stability assessment of the tip;
- an assessment of the potential impacts in the event of instability;
- matters affecting or with the potential to affect the stability of the tip, this could include land use, any proposed development or the proximity of a water course;
- whether any interdependencies between the tip and another disused tip could affect the stability of the other tip (e.g. where there is shared drainage infrastructure across multiple tip sites); and
- whether the criteria for registration are met.

Not all disused tips will require the more extensive full assessment. This follows the Bill's principles of proportionality and ensures resource is prioritised to those disused tips that pose a threat, or could pose a threat, to human welfare.

Additional Full Assessment of a disused tip already in the register

The Authority can also carry out an additional full assessment in relation to a disused tip that is already in the register where this is considered appropriate because of a change in circumstances or because information has become available since the tip was previously subject to a full assessment. Examples include instances where:

- monitoring activities have identified significant deterioration in the performance of safety critical infrastructure on the tip;
- land or property development adjacent to the site introduces or increases the potential impact on receptors; and
- changes in land use which may influence the engineering performance of the site.

The assessment will be the same as outlined above for a full assessment.

Reports

The Bill requires the Authority to produce a report following each assessment as soon as practicable. The guidance will set out an expectation that following an assessment, the assessor should produce the report promptly. The guidance will provide further detail on

what is meant by promptly and what that will look like in relation to different types of reports, for example a report on a more complex assessment. If the report can't be completed within a practicable timeframe, the guidance will set out the expectation that the Authority should keep landowners informed of developments, including why there is a delay and advise when the report is expected to be completed.

The guidance will advise that reports should be quality assured to ensure that (while not limited to):

- conclusions are supported by relevant data/evidence;
- a summary of the available data considered is provided as part of the assessment; and
- good practice regarding the maintenance of a disused tip is highlighted.

In addition to quality assuring reports, the guidance will explain the expectation that reports should be signed off by a senior officer of the Authority. It will be for the Authority to determine who that should be, considering the operational/technical knowledge and or expertise and responsibilities of the officer.

Preliminary Assessment Report

The guidance will set out the requirement in the Bill that when the Authority carries out a preliminary assessment it must set out the conclusions of the preliminary assessment in a report (a "preliminary assessment report"). In addition, the guidance will set out that the Authority can include any other information it considers appropriate.

The guidance will set out the expectation that, as a minimum, a preliminary assessment report should include:

- Administrative information:
 - unique Identifier (UID)
 - location of the disused tip including mapped boundary
 - name of assessor
 - date of assessment
- Technical Information.

Table 1 – Examples of the type of technical information

1. Geotechnical	Tension cracking, hummocking, subsidence, erosion
2. Drainage	Channels, culverts, headwalls, trash screens
3. Engineering Infrastructure	Retaining structures, retention systems
4. Instrumentation & Monitoring	Rain Gauge, flow meter, survey points
5. Contamination & Geo-environmental	Pollution, hazardous materials, invasive species

Additional Preliminary Assessment Report

The guidance will set out the expectation that when the Authority carries out an additional preliminary assessment, it must set out the conclusions of the additional preliminary assessment in a report (an "additional preliminary assessment report"). In addition, the guidance will clarify that the Authority can include any other information it considers appropriate.

Full Assessment Report

The guidance will set out the expectation that when the Authority carries out a full assessment it should set out the conclusions of the full assessment in a report (a “full assessment report”). The guidance will set out the expectation that, as a minimum, a full assessment report should include:

- **Administrative information:**
 - unique Identifier (UID)
 - tip category
 - location of the disused tip including mapped boundary
 - name of assessor
 - date of assessment and preliminary assessment, and additional preliminary assessment.

In addition, the guidance will clarify that the Authority can include any other information it considers appropriate.

The Authority will be required, as soon as practicable, to issue a notice of the conclusions of a full assessment to every owner and every occupier of the land on which a tip is situated.

Additional Full Assessment Report of a disused tip already in the register

The guidance will set out the expectation that when the Authority carries out an additional full assessment on a disused tip already in the register it should set out the conclusions of the additional full assessment in a report (an “additional full assessment report”).

The administrative information in the report will be the same as set out above for the full assessment report.

In addition, the guidance will clarify that the Authority can include any other information it considers appropriate.

Competency

An assessment should only be conducted by an individual who has sufficient training, knowledge and experience to carry out the activity. The guidance will recommend that the Authority prescribes the necessary skills and qualifications needed in this regard and the expectation that the Authority will take the lead in skills development and build the necessary resource capacity and capability in Wales.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders.

FAQs

This section would set out an expectation that the Authority will publish an FAQ document on the approach it takes to assessments.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2)

Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourage the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Huw Irranca-Davies MS
Deputy First Minister and Cabinet Secretary for Climate Change and
Rural Affairs

14 February 2025

Dear Huw,

Disused Mine and Quarry Tips (Wales) Bill

Thank you for attending the Legislation, Justice and Constitution Committee meeting on 10 February 2025 to discuss the Disused Mine and Quarry Tips (Wales) Bill.

At the close of the meeting, I said that the Committee would write to you with further questions that we were not able to reach during the meeting. The questions are enclosed in the Annex. During the meeting, you also offered to provide copies of draft guidance, to assist the Committee's scrutiny of the Bill.

We would be grateful to receive a response, and copies of the draft guidance, by 5 March 2025.

I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,



Mike Hedges
Chair

Annex

Question 1: There are a number of provisions within the Bill which require the consent of the Secretary of State under Schedule 7B to the *Government of Wales Act 2006*. In a letter to the Llywydd dated 8 November 2024, the First Minister stated that engagement with the UK Government to seek Secretary of State consent for the provisions had begun. Can you provide an update as to when consent is expected to be received?

Question 2: The Explanatory Memorandum accompanying the Bill does not discuss human rights, although there is mention of human rights within the RIA. What account have you taken of human rights in preparing the Bill?

Question 3: What was the outcome of any assessments undertaken in relation to the human rights impacts of the Bill? What steps have you taken to limit the interference with human rights by the Bill?

Question 4: Please can you explain if the outcome of the justice impact assessment resulted in a change of approach in relation to the Bill and if so, what that change was?

Question 5: You have acknowledged that the Bill changes elements of your 2022 White Paper for reasons of flexibility, proportionality and reasonableness. Why did you not therefore consult on a draft Bill given the importance of the subject matter?

Question 6: What are the differences between the Bill as described in the White Paper and the Bill as introduced, and as part of that information can you identify every occasion where the White Paper suggested the use of primary or secondary legislation but guidance is to be used instead?

Question 7: The White Paper proposals focused on disused coal tips, but it suggested that the government would look to develop a framework, which can apply equally to both coal and non-coal tips, enabling the phasing in of other spoil tips into the new regime over time (paragraph 1.44).

- (i) Has the application of the Bill to non-coal tips led to a greater reliance on guidance to deliver its objectives rather than subordinate legislation? (For example, in relation to management plans – see paragraph 6.12 of the White Paper).
- (ii) If that is not considered to be the case, how has the decision to extend the Bill to include disused non-coal tips impacted on the level of detail included in the Bill, the powers to make regulations and the use of guidance?

Question 8: What is the relationship between the definition of “threat to human welfare” in section 82, and the Authority’s main objective in section 2(1) to ensure that disused tips do not threaten human welfare?

Question 9: Section 2(1) of the Bill sets out the Authority’s main objective. What are the Authority’s other objectives, and why aren’t they on the face of the Bill?

Question 10: Sections 12 to 19 concern assessments of the stability of a tip. The way assessments will be carried out is to be determined in guidance issued by the Welsh Ministers.

Why is there no detail about how assessments are to be carried out on the face of the Bill? Why did you not consider including a power for that information to be set out in regulations?

Question 11: The Law Commission recommended a right of appeal against an entry in the tip register on the grounds that there is no tip situated on the land. Rather than an appeals process, section 20 of the Bill enables the tip owner (and other persons) to make representations on the proposal to register a tip, which section 21 requires the Authority to have regard to when deciding whether to register it. To what extent do you consider that this approach captures the intent of the Law Commission's recommendation?

Question 12: Sections 20, 22 and 29 contain Henry VIII powers. Why are they subject to the negative procedure?

Question 13: Section 24 concerns the categories of tips. The White Paper (paragraph 7.7) says:

"We believe to provide clarity on roles and responsibilities, the legislation should clearly state who is responsible for which category of tip, providing parties with sufficient knowledge in advance of what responsibilities they will be required to meet."

Why have you not followed what the White Paper proposed?

Question 14: The Welsh Government's letter to the Law Commission in March 2023 said that the Authority will be under a duty to make arrangements for management plans to be prepared for Category 1 and 2 tips. However, the EM states (paragraph 3.73) that:

"Whilst the Bill does not require the production of management plans, these will be important to the application of the regime."

While management plans were discussed during the evidence session, it would be helpful if you could please explain what caused this position to change?

Question 15: If the preparation of management plans is only an expectation in guidance, does that mean some Category 1 and 2 tips could feasibly not have management plans and therefore undermine the effectiveness of the legislation?

Question 16: The White Paper proposed a range of enforcement powers and associated offences, and a range of civil sanctions like fixed monetary penalties, compliance notices, stop notices etc. These haven't been included in the Bill. The EM states (paragraph 4.30) during the course of policy development it was determined "their inclusion would make the regime overly bureaucratic and unwieldy".

Why would enforcement matters being placed on the face of the Bill be overly bureaucratic and unwieldy and is there a risk that this gap could reduce public confidence in the regime?

Question 17: Why is there no civil sanctions regime on the face of the Bill?

Question 18: Sections 33 and 34 enable property to be disposed of by the Authority and disused tip owners, including by sale. Why do you consider that this provision is necessary and could you provide details of what could be sold under this power?

Question 19: Given the amount of detail that will be left to guidance, why wasn't a duty placed on the Welsh Ministers to produce and update guidance and why are you relying on the executive ministerial functions in section 58A of the *Government of Wales Act 2006*? How is that consistent with the Welsh Government's accessibility agenda?

Question 20: Section 72 prevents proceedings being brought in respect of an offence in the Bill, or regulations made under it, other than by the Authority or with the consent of the Director of Public Prosecutions. Why is this provision necessary?

Question 21: Why do you consider that the Henry VIII power in section 73 is required?

Question 22: What is the purpose of section 79 of the Bill, which makes specific provision in respect of Church of England land?

Question 23: Section 80 enables the Welsh Ministers to make regulations which modify the application of this Act in relation to land in which the Authority has an estate or interest. Why is this power necessary?

Question 24: Specific reference is made to the Crown including the Senedd Commission in section 84(7) of the Bill. Why is this provision needed?

Question 25: Paragraph 3(g) of Schedule 1 to the Bill enables the Welsh Ministers to specify in regulations office holders, members and members of staff of bodies who are to be disqualified from being a non-executive member of the Authority. Why was this provision not included on the face of the Bill to provide clarity given that other disqualified persons are listed in paragraph 3(a) to (f)?

Question 26: Paragraph 19(1) of Schedule 1 includes a Henry VIII power to amend the planning period for the Authority. Why do you consider this power to be necessary?

Question 27: How will cross border tips be dealt with under the Bill?

Question 28: In your view, will further legislation be required in the near future in other areas of the law to accommodate the provision made by the Bill? For example, changes to planning or environmental legislation to assist with the implementation of the Bill?

Question 29: What would the timescales be for the preparation and introduction of the proposed legislation referred to in question 28?

Question 30: Section 87 provides that some provisions of the Bill will come into force on 1 April 2027. Why will there be such a delay between Royal Assent and the relevant provisions coming into force?

Question 31: Is there a risk that delay in commencement of the provisions of the Bill may carry a risk that the protections offered by the Bill provisions are delayed or not fully brought into force by a future Welsh Government?

Question 32: Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation and guidance being fully in force?



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Children's Wellbeing and Schools Bill
DATE	10 March 2025
BY	Lynne Neagle, Cabinet Secretary for Education and Dawn Bowden MS, Minister for Children and Social Care

In December 2024 the UK government introduced the Children's Wellbeing and Schools Bill to Parliament. The Bill, which applied to England only on introduction, includes a range of provisions that aim to strengthen existing safeguarding arrangements, raise standards in education and promote children's wellbeing.

Whilst education and social care policy and decisions are devolved in Wales, children's welfare, safeguarding and protecting children's rights are at the forefront of every decision that we make. These are the core aims that underpin the provisions in the Bill, and it is important that when government principles align on such important matters, we work together to achieve the desired outcomes.

Within the Bill there are clauses that seek to introduce new duties that will strengthen existing UK legislation relating to child protection, children not in school, and children's social care. These are areas that would strongly benefit from additional legislative measures across both nations, and will support local authorities and partners to meet their safeguarding duties. If equal measures are not implemented in Wales, this would result in fewer protections for our children than their counterparts in England.

With this in mind, we have discussed the Bill with the UK government and have asked that certain provisions within the Children's Wellbeing and Schools Bill, be applied to Wales in the same way as England.

The areas within the Bill that will apply to Wales are those that relate to:

- Children in secure accommodation

- The extension of the offence of ill-treatment of a child by a care worker to cover 16/17-year-olds.
- Children not in school

Committee Stage of the Bill has concluded and amendments to extend the clauses covering the areas above to Wales are currently being considered at Report Stage.

Subject to agreement with the UK government other areas of the Bill may be included at a later stage. Should additional provisions be extended to Wales, a further update will be issued.

This statement is being issued to provide members with an update on the Welsh Government's proposed plans. A further statement setting out the policy rationale for seeking provision in relation to Wales from the Bill will follow in due course, as discussions with the UK government progress.

Full details on the Bill are available on the following link: [Children's Wellbeing and Schools Bill - Parliamentary Bills - UK Parliament](#)

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 10

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: PO/HIDCC/0091/25

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

27 February 2025

Dear Llŷr,

I am pleased to inform the Committee that following engagement with the UK Government, Minister of the Crown consent has been received in respect of the relevant provisions in the Disused Mine and Quarry Tips (Wales) Bill.

This letter has been copied to the Llywydd, Legislation, Justice and Constitution Committee and the Finance Committee.

Yours sincerely,

Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Document is Restricted

Agenda Item 13

By virtue of paragraph(s) vii of Standing Order 17.42

Document is Restricted

Agenda Item 14

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted

Document is Restricted



By email only

28 January 2025

Dear Mr Hedges MS,

I am writing to you in your capacity as Chair of the Legislation, Justice and Constitution Committee of Senedd Cymru/Welsh Parliament. As you will be aware, there is intensifying debate in Ireland about the prospects for a “border poll” – as provided for in the Northern Ireland Act 1998 s 1 and sch 1 – read with the relevant provisions of the Belfast/Good Friday Agreement.

These discussions involve much more, of course, than the mechanics of concurrent referendums on the island of Ireland. Given the level of engagement on this aspect of the Belfast/Good Friday Agreement, and the practical significance for everyone across these islands, I write to ask if your Committee might consider an evidence session to explore the subject. Whatever view is taken on the future of Northern Ireland, there is merit in the current focus on responsible preparatory work for all possible outcomes. However, it remains underexplored, and it is my view that this gap must be addressed. In particular, what are the implications for Wales of the accelerating constitutional conversations about a united Ireland? What are the lessons from the Welsh experience for Ireland? What might Wales learn from the Belfast/Good Friday Agreement? These are only some of the questions that may be of interest to your Committee.

You will know, for example, that in Ireland in July 2024 the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement recommended that preparation commence immediately, among other suggestions. My own view, as an academic working in this area of constitutional law, is that your Committee could offer a forum for serious consideration of the matter in Wales and make a valuable contribution to these deliberations. My primary concern, as indicated above, is that this has not had the detailed attention it merits beyond the island of Ireland, including in Senedd Cymru/Welsh Parliament. That is surprising given the implications for these islands. With increasing public debate in Ireland on the potential for a “border poll” this decade, it may well be an appropriate time for your Committee to explore the topic.

Thank you for taking the time to consider my request and please let me know if any additional clarification would be helpful.

Yours faithfully,

A handwritten signature in black ink that reads 'Colin Harvey'.

Professor Colin Harvey
School of Law
Queen's University Belfast

Agenda Item 17

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery



Llywodraeth Cymru
Welsh Government

Mike Hedges MS, Chair
Legislation, Justice and Constitution Committee

11 March 2025

Annwyl Mike,

Consolidation of planning law

Thank you for your further letter of 19 February regarding the timetable for consideration of the Bills that will consolidate planning law.

The responsibility for setting the timetable for consideration of Bills sits with the Business Committee, and I had the opportunity to discuss the Government's intentions for legislating in the final year of this Senedd term with that Committee on 4 March.

I explained to the Business Committee that whilst I understand the Legislation, Justice and Constitution Committee's concerns about the time available, the Bills and supporting documentation will not be finalised in sufficient time to enable the Llywydd to consider the Bills during the usual determination period and then be introduced prior to summer recess.

For the avoidance of doubt, my intention to make the Bills available in June is not intended as a substitution for formal introduction. It is, as I said, intended to be helpful to your Committee (and other Members) and support your preparations for scrutiny and to be able to effectively comment on the draft timetable when you are asked by the Business Committee.

I am copying this letter to the Rt Hon Elin Jones MS, the Llywydd and Chair of the Business Committee.

Yn gywir,

Julie James AS/MS

Y Cwnsler Cyffredinol a'r Gweinidog Cyflawni
Counsel General and Minister for Delivery

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Cwnsler.Cyffredinol@llyw.cymru
correspondence.Counsel.General@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Julie James MS

Counsel General and Minister for Delivery

19 February 2025

Dear Julie

Consolidation of planning law

Thank you for your letter dated 4 February 2025, in which you responded to questions the Committee asked on 23 January 2025. The Committee considered your response at its meeting on 10 February 2025.

First, the Committee is grateful to you for providing details of the expected sizes of both planned consolidation Bills.

The Committee also noted that it is your intention to engage formally with the Business Committee "much nearer to the time of likely introduction" of the Bills. We are aware that the Business Committee considered our exchange of correspondence on 11 February 2025. We recognise that it will be a decision for the Business Committee on how and when it wishes to discuss with you the procedures that will be required to support scrutiny of both consolidation Bills in parallel. For our part, we intend to continue to draw relevant matters to the Business Committee's attention to assist it in this engagement.

In your letter you confirm that your current intention is to introduce both consolidation Bills in September. You also state that it is your "intention to make available to Senedd Members a draft of the main Bill, and hopefully also the consequential provisions Bill, in June". While we welcome the constructive spirit behind this intention, the Committee has some concerns with the Government's proposed timetable for this important work.

You will be aware that the Welsh Government's first Consolidation Bill – the Historic Environment (Wales) Bill – was introduced to the Senedd in July 2022. That Bill, in line with the Committee's recommendation, was the subject of only a single amending stage following the Committee's initial

consideration that took place between July and December 2022. Nonetheless, that Bill did not complete its passage through the Senedd until 28 March 2023. Should the Committee have recommended a second amending stage, the Bill may not have been put to a final stage vote in the Senedd until a month or so later.

We accept that size is not the only determining factor in the question of how much time a Senedd Committee should reasonably be given to undertake its legislative scrutiny. However, we are of the view that the Committee should not be expected to undertake robust and thorough consideration of two consolidation Bills, totalling approximately 500 pages and in accordance with novel parliamentary processes being adopted for the first time, in what would appear to be an unusually short period of time. This view has been informed by our experience with the timescale for the single Historic Environment (Wales) Bill as detailed above. Should the Welsh Government not formally introduce both Bills until September, we are unclear how the Committee could be given sufficient time to undertake its work at the initial consideration and detailed committee consideration stages, while time is also protected in the overall timetable for a second amending stage should the Committee recommend that that is necessary.

Your offer to share with Members of the Senedd a draft version of the main Bill ahead of formal introduction will not, in our view, act as a substitute for the Bills and their accompanying documents being formally laid before the Senedd in sufficient time so as to allow proper scrutiny of this important legislation before the Sixth Senedd comes to an end next Spring.

The Committee would urge you to consider how you may be able to formally lay the Bills and required accompanying documentation before the end of the Senedd's summer term this year. Should you also be in a position to share with Members of the Senedd draft versions of the Bills and explanatory materials, we would not object to this offer.

We would welcome a response by 12 March 2025.

I am copying this letter to the Rt Hon Elin Jones MS, the Llywydd and Chair of the Business Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges
Chair



LEGISLATIVE CONSENT MEMORANDUM

BUS SERVICES (No. 2) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29 which prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. The Bus Services (No. 2) Bill (“the UK Bill”) was introduced in the House of Lords on 17 December 2024. The UK Bill can be found at: [Bus Services \(No. 2\) Bill \[HL\]](#)

Policy Objective

3. The UK Government’s stated policy objective is to deliver better bus provision by empowering local leaders in England to choose the bus operating model that works for their local area and provide powers to effectively underpin those models. The aim is to help improve bus services and grow usage, as passengers benefit from a more reliable network that provides the connections people need across the country.
4. The intention is to provide local leaders with more control and flexibility over bus funding and give them the freedom to take decisions to deliver their local transport priorities through:
 - a. Empowering local transport authorities (LTAs) and reforming funding.
 - b. Allowing every community to take back control of their buses.
 - c. Accelerating the bus franchising process.
 - d. Ensuring that the provision of socially necessary local services is considered appropriately.
 - e. Supporting public ownership.

Summary of the UK Bill

5. The UK Bill is sponsored by the Department for Transport (DfT).
6. The UK Bill makes provision for:
 - i. Franchising – the UK Bill enables all LTAs to franchise their bus services without requiring the consent of the Secretary of State.
 - ii. Socially necessary local service – this measure aims to promote the wider thinking around local network management, including how bus services are maintained.
 - iii. Enhanced Partnerships – the UK Bill will strengthen the partnership approach between LTAs and bus operators.

- iv. Local authority owned bus companies – the UK Bill will repeal the ban on establishing new local authority bus companies.
 - v. Grants – the UK Bill will provide LTAs with a power to make grants to operators of bus services in their areas.
 - vi. Information about local services (bus registration) - provisions on bus registration will place a statutory requirement on LTAs in Enhanced Partnership areas with a delegated registration function, and franchising authorities, to provide information about bus services to a common location and to a data standard defined in secondary legislation.
 - vii. Enforcement – the UK Bill includes measures to improve safety on buses by giving greater powers for LTAs to bring forward byelaws to tackle anti-social behaviour and help to improve safety on buses. The Bill also amends section 24 of the Public Passenger Vehicles Act 1981 to give LTAs additional powers to enforce fare requirements.
 - viii. Safety and accessibility of stopping places – the UK Bill includes the measure to develop statutory guidance on the inclusivity of bus stops and stations and facilities.
 - ix. Safeguarding for school services - the UK Bill includes a measure to require operators of public service vehicles to check an enhanced criminal record certificate, including information as to whether the driver is on the children’s barred list, for drivers who carry out “closed” school transport services frequently or more than 3 times in any 30-day period.
 - x. Training of staff – the UK Bill includes powers to mandate training of bus drivers and others on tackling crime (which the UK Government intends will include offences against women and girls) and anti-social behaviour, and in relation to disability awareness and disability assistance.
 - xi. Zero-emission Buses (ZEBs) – this measure will accelerate the rollout of ZEBs by introducing a restriction on the use of new non-zero-emission buses on registered local bus services. The restriction will not be able to take effect before 1 January 2030.
7. My officials had several meetings and email exchanges with DfT colleagues during November and December 2024 to discuss the proposals for the UK Bill. DfT officials also held two workshops for England’s bus industry stakeholders, which were attended by my officials. No formal consultation was held in relation to the provisions in this Bill.
 8. The UK Bill makes a number of changes to existing statute, including to the Transport Act 1985 and the Public Passenger Vehicles Act 1981.

These have already been amended many times by the UK Government and the devolved governments. This adds to their complexity and the time it has taken to unpick the details and how they apply to Wales.

9. In addition to this, the UK Bill was introduced on 17 December 2024, immediately prior to recess.

Provisions in the Bill for which consent is required

10. In my view, an LCM is required in relation to clause 23.

Clause 23 - Powers of inspectors. This clause amends section 24 of the Public Passenger Vehicles Act 1981 (the 1981 Act) to enable the Secretary of State to make regulations about the conduct of inspectors authorised by a local transport authority in England, in relation to a local service which has a stopping place in England, whether the vehicle used to provide that service is in England or not. This means that the Secretary of State may, by regulations, enable an inspector authorised by an English local authority to carry out an inspection of a cross-border service, while the vehicle is in Wales.

UK Government view on the need for consent

11. To note, the UK Government is of the view that this provision relate to reserved matters and therefore do not engage the Legislative Consent Motion process in the Senedd.

Reasons for making these provisions for Wales in the Bus Services (No 2) Bill

12. The provision does not affect an operator's ability to appoint inspectors on their local bus services (i.e. that has one or more stopping places in Wales). However, the conduct of inspectors of cross-border services, while in England or in Wales, may in some circumstances be regulated by the Secretary of State under section 24 of the Public Passenger Vehicles Act 1981, as amended by clause 23 (provided that the inspector was authorised to act as such by an English transport authority).
13. It will continue to be the case that local authorities in Wales cannot appoint "inspectors" for the purposes of section 24 of PPVA unless they do so in their capacity as PSV operator in relation to particular services.
14. I am not concerned about the impact of this provision on bus services in Wales because they will not change operators' ability to appoint inspectors in Wales.
15. The interconnected nature of the transport system in Wales and England means there will inevitably be a cross over in interests. However, in the case of clause 23 it does not seek to make provision for Wales, but it will impact a devolved matter, i.e. local bus services.

Financial implications

16. The amendment is unlikely to have financial implications for bus service operators or the public sector in Wales.

Conclusion

17. In my view it is appropriate to deal with these provisions in this UK Bill for the reasons set out in paragraphs 12 to 15 above.

18. Therefore, I recommend that the Senedd supports the proposal and gives its consent.

Ken Skates MS
Cabinet Secretary for Transport and North Wales
11th March 2025